Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)	GN Docket No. 09-137

COMMENTS OF CENTURYLINK ON NBP PUBLIC NOTICE # 19 (ROLE OF USF AND INTERCARRIER COMPENSATION)

David C. Bartlett
John E. Benedict
Jeffrey S. Lanning
701 Pennsylvania Ave, NW, Suite 820
Washington, DC 20004
(202) 393-7113

Of Counsel

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, VA 22314
(703) 838-0115

Counsel for CenturyLink

December 7, 2009

Table of Contents

SUMMARY

CenturyLink agrees with the Commission that reform of universal service support and intercarrier compensation is essential to the deployment of broadband services to all Americans. CenturyLink has been able to bring broadband that can deliver 768 kbps downstream to approximately 89 percent of its residential and single-line business customers, which is tangible evidence of its strong commitment to provide high-quality and advanced services to its rural subscribers in high-cost areas, even in the face of challenging economic conditions. CenturyLink could not have achieved this success without adequate universal service support and intercarrier compensation.

More widespread deployment of networks capable of delivering advanced broadband services to all Americans pursuant to a National Broadband Plan will take a multitude of interrelated strategies. There are three basic elements to these necessary reforms. First, the current systems of universal service support and intercarrier compensation must be stabilized in order to sustain the current level of network investment and to provide a foundation for progress toward additional broadband deployment. Second, federal universal service fund ("USF") support should be repurposed, and targeted to provide more granular support to high-cost, rural, and insular areas which are truly in need of universal service funding. Third, support mechanisms must be redesigned on a wire-center basis to explicitly accommodate broadband service availability, such as coverage of no less than 98 percent at a robust broadband speed of no less than 6 Mbps downstream.

The goals articulated above can be met by Commission adoption of the Broadband Now Plan filed today by CenturyLink and four other mid-sized incumbent local exchange carriers ("ILECs") that will significantly advance the nation's broadband goals and as a part of such

advancement, reform USF and intercarrier compensation. The Broadband Now Plan is a bold but measured proposal that will enable the Commission immediately to begin making substantial progress toward its goal of ubiquitous broadband deployment and establishing a more sound foundation for its consideration of the appropriate intercarrier compensation and USF policies for our broadband future.

Size of the Universal Service Fund. The Commission must provide for a sufficient fund to meet its projected target, as required by Section 254 of the Act. The proper size of the USF that includes a new broadband component depends on the broadband policy objectives the Commission establishes. Current Commission estimates indicate that it will cost between $20-350 billion to deploy broadband capable networks ubiquitously. This translates to $2.85-50 billion per year in incremental, after-tax private investment and public funding, assuming the broadband goal is to be reached within 7 years. If the Commission were to repurpose and target a portion of existing high-cost support—approximately $4.5 billion annually in pre-tax dollars—that support could significantly increase broadband availability. Supplemental USF funding may ultimately be required to "move the needle" on broadband deployment in the time frame established by the Commission, but such incremental funding could be eliminated or significantly reduced once the Commission's predefined deployment goals are met.

Contribution Methodology. Modification of the contribution rules is a pressing aspect of universal service funding today. The new methodology should be clear, easy to administer, and produce stable and equitable revenues for the USF. For these reasons, CenturyLink supports a proposal set forth by a number of parties, which would adopt a hybrid numbers-based or connections-based methodology, applicable in either case to both voice and broadband connections. No exceptions should be made. Based on the current size of the fund, CenturyLink

estimates that moving to a connections-based USF contribution mechanism would yield a per connection surcharge of $1.09 per connection per month, clearly a modest charge for consumers.

Transitioning to Broadband Support. Reforming the existing USF fund to support broadband should be a transitional process, protecting service reliability for the benefit of consumers. Longer term, funding should be aligned into two primary categories: (1) maintenance capital expenditures and operating expenses; and (2) incremental funding specifically for broadband deployment. Until this transition can be accomplished, the Commission should immediately adopt the Broadband Now Plan, which:

- reforms non-rural high cost support for price cap carriers to provide support to wire centers that have costs which exceed 2.75 times the national average cost per line;
- qualifies any carrier for support that assumes COLR responsibilities and uses incremental support to provide advanced broadband;
- requires use of incremental support to be devoted to broadband investment until broadband is deployed to 98 percent of lines;
- obligates providers to contribute significant private investment capital toward achieving broadband availability; and
- reviews the mechanism after the transition is implemented.

The Broadband Now Plan would better target existing high cost support to areas truly in need of support, repurpose USF over time to support broadband, and support both capital expenditures and ongoing operational expense needed to support uneconomic areas. It would also maintain service to existing voice customers, meet emergency and law enforcement needs, and expand middle and second mile transport for other providers in rural areas.

Impact of Changes on Current Revenue Flows. Sufficient intercarrier compensation revenues are also necessary to fund capital and operational expenses, and attract long-term capital investment. These sources of investment capital—internally generated cash flows from operations and external debt and equity—are critical to funding a multi-year, multi-billion dollar

broadband deployment, along with supporting universal service goals. The Broadband Now Plan recognizes this by encouraging the Commission to:

- adopt "phantom traffic" rules that enforce existing obligations;
- enforce existing access charge compensation for VoIP services; and
- end current self-help efforts so that withheld access charges are paid.

These efforts will stabilize current intercarrier compensation mechanisms and will help define the nature and scope of industry revenues, which should ultimately reduce the amount of public funding required to achieve ubiquitous broadband deployment. In addition, the Broadband Now Plan would reform intercarrier compensation by:

- reducing intrastate terminating switched access and reciprocal compensation rates to $0.0065 per minute in three equal installments over three years;
- further reducing those same rates in two equal adjustments to $0.0055 per minute over two additional years, for a total of five years' worth of rate reductions;
- establishing a local service benchmark rate of $23.50 per month for residential service;
- allowing gradual increases in subscriber line charges from $6.50 to $8.00 per line per month for residential service;
- establishing a Network Advancement Mechanism that would compensate an ILEC for part of the lost revenues caused by decreasing intercarrier compensation rates, as if the local service benchmark rate were charged;
- eliminating equal access obligations for all competitors; and
- reviewing the results of the plan to determine whether further reforms are necessary.

This plan would produce three main benefits. First, it would greatly reduce most uneconomic arbitrage, stabilize carrier revenues, and reduce intercarrier disputes. Second, it would reduce rates significantly for carrier customers, and moderate any necessary consumer price increases, which is a financial benefit to all. Third, it would provide carriers with a reasonable and manageable glide path that could accommodate regulated revenue decreases while maintaining the ability to invest in the Nation's broadband infrastructure.

Competitive Landscape. The most efficient and cost effective means of deploying a robust broadband platform in rural America is to upgrade the existing wireline network. High-cost rural areas are uneconomic to support without sufficient intercarrier compensation and USF. The current regulatory imbalances among competitor segments should be taken into account in crafting reformed universal service rules. Therefore, the Commission should reject the suggestions by some industry participants that universal service support should be eliminated where either a cable competitor operates in part of the ILEC's market or partial rate deregulation has occurred. Such suggestions only underscore a misunderstanding of the existing system of cross-subsidies and the lack of commitment by some providers to serving rural consumers.

High Cost Funding Oversight. CenturyLink supports the establishment of effective auditing programs. Those programs, however, should be made more efficient by employing qualified auditors, reducing the burdensome and repetitive nature of the audits, better advising auditors on Commission policies, and auditing all beneficiaries equally.

Lifeline/Link-up. CenturyLink agrees with the suggestion to establish a reasonable program to encourage broadband subscriptions based on the existing guidelines for Lifeline/Link-up discounts for voice services. Notwithstanding, the Commission should also take other steps to improve adoption. In particular, the Commission should address current cable restrictions on advertising of broadband services by its competitors, and encourage other programs that expand the availability of computer equipment and information about broadband services and usage.

The Commission should take immediate steps to advance broadband deployment by adopting and implementing the Broadband Now Plan and jump-starting the regulatory reform process to modernize telecom policy to achieve ubiquitous broadband deployment.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)	GN Docket No. 09-137

COMMENTS OF CENTURYLINK ON NBP PUBLIC NOTICE # 19
(ROLE OF USF AND INTERCARRIER COMPENSATION)

CenturyLink, on behalf of its operating subsidiaries, hereby files these comments in the above-captioned proceeding in response to the Federal Communications Commission's Public Notice seeking comment with respect to the impact of the Commission's universal service fund ('USF") and intercarrier compensation mechanisms on the development of a National Broadband Plan.[1]

[1] Public Notice # 19, *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, GN Docket Nos. 09-47, 09-51, and 09-137, DA 09-2419 (rel. Nov. 13, 2009)("Public Notice").

I. INTRODUCTION

CenturyLink is a diversified communications company, providing voice, broadband, and video services to its largely rural and smaller communities in 33 states. As a mid-sized incumbent local exchange carrier ("ILEC"), the company serves approximately 7.2 million voice customers and 2.2 million broadband customers throughout its service territories. Approximately 89 percent of its customers can receive broadband service today with an advertised downstream transfer rate of 768 kbps or higher. CenturyLink's average teledensity is approximately 23 households per square mile. This level of current broadband availability is tangible evidence of CenturyLink's strong commitment to provide high-quality and advanced services to its rural subscribers in high-cost areas, even in the face of challenging economic conditions. CenturyTel, Inc. and Embarq Corporation combined in June 2009 to become CenturyLink, a company with the experience and market focus to lead the efforts to introduce advanced new communications services in rural America. With its 33-state footprint, CenturyLink believes that it has a unique perspective regarding the challenges in creating and implementing a National Broadband Plan that addresses the needs of a variety of markets and underserved and unserved customers.

CenturyLink's network enhancement and expansion efforts enable it to provide broadband service to a significant portion of Americans within its territories. Like most ILECs serving lower density, high-cost areas, CenturyLink is a highly regulated carrier that relies on a financial model to support this network investment that is dependent on three primary revenue sources:

- customers who are paying for quality services at affordable local rates,
- other carriers that pay intercarrier compensation for use of the company's network, and

- universal service support for providing services in high cost and rural regions that are otherwise uneconomic to serve.

While these three revenue streams provide some funding for broadband investment, network construction requires extensive up-front capital investment so CenturyLink (and carriers like it) rely on investor capital from debt holders and shareholders who are convinced of the company's ability to achieve a fair and stable return on that investment. CenturyLink has been a good steward of the support funding it has received through universal service support and intercarrier compensation. More recently, this funding has assisted the company in building out a modern and extensive broadband-capable network that provides increasingly advanced services, to a high proportion of its customers. The market for communications services has changed markedly over the last decade, causing CenturyLink to face ever increasing competitive pressures even in the more densely populated parts of the rural areas where its carrier-of-last-resort ("COLR") obligation is very costly to fulfill.

Most commenters agree that the federal universal service fund ("USF") and intercarrier compensation mechanisms are in need of reform. Three basic elements are necessary to create reforms that will allow carriers the opportunity to remain financially sound and to achieve new national broadband deployment goals. First, the current systems of USF and intercarrier compensation must be stabilized to maintain the current support streams that are being reinvested in the network and to provide a foundation for progress toward additional broadband deployment. Second, USF support should be repurposed, and targeted to provide more granular support to high-cost, rural, and insular areas which are truly in need of universal service funding. Third, support mechanisms must be redesigned on a wire-center basis to explicitly accommodate broadband service availability, such as coverage of no less than 98 percent at a robust broadband

speed of no less than 6 Mbps downstream. These steps will enable the Commission to promote continued private investment at sufficient levels in the nation's broadband services market, while providing the flexibility to pursue more ubiquitous broadband availability pursuant to policies contained in a National Broadband Plan.

The goals articulated above can be met by Commission adoption of the mid-sized ILECs' Broadband Now Plan. Adoption of this plan will significantly advance the nation's broadband goals and, as a part of such advancement, reform USF and intercarrier compensation. The Broadband Now Plan is a bold, but measured, proposal that will enable the Commission to leapfrog years of frustrating wrangling regarding how best to reform intercarrier compensation and USF. CenturyLink is committed to working with the Commission to achieve the goal of widespread availability of advanced broadband networks.

As requested by the Commission in the Public Notice, the following comments are organized pursuant to the categories listed in the Notice.

II. SIZE OF THE UNIVERSAL SERVICE FUND

A. Funding Necessary from High Cost and Broadband Support Mechanisms Depends on the Level of Broadband Required and Time for Deployment.

The Commission in the Public Notice seeks comment on the appropriate size of the USF in the context of the National Broadband Plan goals.[2] The Commission recognizes that advancement of broadband should be a critical new goal of the USF. The proper size of the USF that includes a new broadband component directly depends on the conclusion the Commission reaches in the National Broadband Plan as to the level of broadband services necessary to ensure

[2] Public Notice at 1.

that all American people have access to broadband capability.[3] Since the National Broadband Plan has not yet been published, an evaluation of the size of the fund necessary to achieve the plan's yet-to-be-defined objectives is not possible at this time. Notwithstanding, CenturyLink will provide some observations about the size of the high cost portion of the universal service fund that might aid the Commission in its deliberations in developing the National Broadband Plan.

If the Commission were to repurpose and target existing high-cost support—a total of approximately $4.6 billion annually[4]—to carriers serving high-cost areas who are committed to providing broadband services in high-cost regions,[5] such support could significantly advance the goals of the National Broadband Plan to reach approximately 98 percent of subscribers in five to seven years with a minimum throughput of 6 Mbps download. This target deployment is based upon an engineering analysis that would shorten loop lengths to about 12,000 feet between the last switching node and the customer's premise in a wireline network. Current industry standards for deploying digital subscriber line ("DSL") technology designed to achieve 1.5 Mbps download speed requires a maximum of approximately 18,000 foot loops. Improvement of

---

[3] The commonly-named "stimulus" law requires the Commission to establish a National Broadband Plan by February 2010 that "seek to ensure that all people of the United States have access to broadband capability. . . ." American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 6001(k)(2) (2009) ("ARRA").

[4] This figure is derived from the Commission's own estimates of high cost fund needs. *See Proposed Fourth Quarter 2009 Universal Service Contribution Factor,* CC Docket No. 96-45, Public Notice, DA 09-2042, at 2 (Off. Managing Dir., rel. Sept. 14, 2009)(" *USF Contribution Factor 4th Quarter 2008 Public Notice*") (Fourth Quarter 2009 projected high cost program support multiplied by four).

[5] CenturyLink demonstrates in Section III, *infra*, how such repurposing and retargeting could be accomplished within the constraints of the current fund size.

performance and speed to achieve a maximum of 6 Mbps download speed requires shortening these loops to no more than 12,000 feet.[6]

If the Commission decides to pursue higher speed thresholds and broader availability targets, it would have to grow the support funding accordingly. Using the figures from the staff presentation on September 29, 2009, high-cost USF support would have to increase to between $7 and $9 billion in order to serve approximately 98 percent of subscribers in seven to ten years with download speeds of approximately 10-15 Mbps. This estimate of the required fund size is consistent with making network modifications that would shorten loop lengths to about 5,000 feet in a wireline network.[7]

An up-front decision on the goal is necessary because proceeding in phases (for example targeting 12,000 foot last-mile connections first, and subsequently targeting 5,000 foot last-mile connections in a second phase) would result in duplicative costs for engineering and outside plant contractors as well as likely stranding a significant portion of the initial phase investment. This stranding of investment could occur where shortening loop lengths requires the redeployment of remote switching nodes closer to where clusters of houses are located. Feeder cable would then need to be redeployed between the nodes and the customer premises, which would require significant additional labor expense.

---

[6] Other technological parameters would also have to be met, such as the elimination of load coils and repeaters, as well as reducing signal interference on a customer's line.

[7] The 5,000 foot approach is consistent with Commission research and data that has been released in its workshops and readouts to date.

B. The Fund Should Be Sufficient to Cover Existing Obligations, the New Broadband Mechanism, and Intercarrier Compensation Reform.

Regardless of the reform mechanisms chosen by the Commission, the USF must be sufficient to cover existing COLR obligations, the new broadband mechanism, and intercarrier compensation reform. The worst public policy outcome of all would be if the Commission were to establish broadband targets that were not achievable through existing revenue sources (customer and support revenues) while simultaneously imposing a cap on USF support at levels insufficient to meet those needs. Such a mismatch between policy goals and the financial support necessary to achieve those goals would also violate Section 254's "sufficiency" mandate.[8]

An example of insufficient funding of policy mandates occurs with the non-rural high cost loop mechanism. Since the Commission adopted the non-rural mechanism in 1999, the Commission has not critically reexamined whether the mechanism is adequately supporting rural and high-cost areas of price cap companies. The Commission has only attempted to justify its establishment of the non-rural mechanism.[9] The Commission, however, has consistently avoided responding to concerns about the mechanism's shortcomings.[10] Further, when the

---

[8] 47 U.S.C. § 254(b)(5). It is undoubtedly true that policies, including the size of a fund that is sufficient to produce a goal, need to be changed in order to refocus universal service toward broadband expansion. It is not consistent, however, with Section 254 to have a policy that is not adequately funded.

[9] *Federal State Joint Board on Universal Service,* CC Docket No. 96-45, Ninth Report & Order, 14 FCC Rcd 20432 (1999)("*USF Ninth Report & Order*").

[10] *Federal-State Joint Board on Universal Service*, Order on Remand, 18 FCC Rcd 22559, 22567, ¶ 14 (Oct. 27, 2003) ("*Qwest Remand Order*") (denied Qwest and SBC requests to increase nonrural funding); *Id*., 22575, ¶ 27 (denied Vermont petition ton increase nonrural support); *Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal service High-Cost Loop Support Mechanism*, WC Docket No. 05-337, 22 FCC Rcd 15801 (2007)("*Iowa Telecom Forbearance Denial*"); Hawaiian Telcom, Inc., Petition for Waiver of Sections 54.309 and 54.313(c)(vi) of the Commission's Rules, WC Docket No. 08-4 (filed Dec. 31, 2007).

mechanism has been challenged in court, the court has indicated that there are outstanding threshold questions and has not addressed appellant's argument that the mechanism fails to provide sufficient support.[11]

It has been known for years that the non-rural mechanism has provided relatively higher support to only a handful of states. In the *USF Ninth Report & Order* the Commission concluded that it fulfilled the "sufficiency" requirement by establishing a mechanism in which non-rural carriers would receive support from the USF based on a forward-looking cost methodology, implemented through the High Cost Proxy Model ("HCPM"), on a state-wide basis for all non-rural carrier wire centers in a state. On appeal, the Tenth Circuit reversed and remanded, finding that the Commission had failed to define key terms in the Act.[12]

On remand, the Commission modified its original mechanism by redefining "sufficiency," modifying its non-rural benchmark to provide support for costs which are two standard deviations above the national average cost per line, adopted rate review, and expanded certification processes to ensure that the states were fulfilling their part of the program.[13] On further appeal, the Tenth Circuit again remanded the case because the Commission's only analysis of the term "sufficiency" considered only one of the goals enumerated in Section 254.[14]

---

[11] *Qwest Corp v. FCC*, 258 F.3d 1191,1205 (10th Cir. 2001)("*Qwest I*").

[12] *Qwest I*, 258 F.3d at 1201.

[13] *Id*.

[14] *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005)("*Qwest II*"). Specifically, the Commission only evaluated whether the non-rural mechanism met the criteria of Section 254(b)(3) and not any of the other criteria contained in subsection (b).

Although the Commission has twice requested comment on the issues raised by the further court remand, the Commission has not yet resolved those issues.[15] Despite this judicial back-and-forth and the Commission's attempts to meet the court's objections, those reforms do not recommend a solution to the problems of support for intrastate rates in the high cost and rural areas of price cap companies caused by state-wide averaging and an inadequate cost model.[16] Although courts have recognized that the Commission is entitled to adopt transition mechanisms in the universal service area rather than solve all problems at once,[17] at some point the Commission will have to reconcile the mechanisms with the statute. As the Commission moves forward in responding to the *Qwest II* remand, it should not miss this important opportunity to fix the parts of the universal service model that are not living up to the expectations of Section 254 of the Act as outlined in these comments. As demonstrated in Section III, *infra*, the Commission must reform its non-rural mechanism to adequately support the high cost and rural areas of price cap company territories if it is to achieve its broadband goals for all Americans.

CenturyLink notes that an important, albeit often overlooked, cause of this funding insufficiency has been taxation policy. USF distributions are currently taxed by the Internal

---

[15] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WCB Docket No. 05-337, 20 FCC Rcd 19731 (2005)("*Qwest Remand NPRM*"); *see also Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Inquiry, 24 FCC Rcd 4281 (2009).

[16] *See High-Cost Universal Service Support*, WC Docket No. 05-337, 22 FCC Rcd 20477, 20506 (Fed.-St. Jt. Bd. USF, 2007) ("*Comprehensive USF Reform Recommended Decision*"). *See also High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, 23 FCC Rcd 1531 (2008) ("*Joint Board Comprehensive USF Recommended Decision NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, 23 FCC Rcd 1467 (2008) ("*Identical Support Rule NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, 23 FCC 1495 (2008) ("*Reverse Auctions NPRM*") (collectively "*USF Notices*").

[17] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 619 (5th Cir. 2000) ("*Alenco*").

Revenue Service ("IRS") as income.[18] Although the industry has regularly argued that these cost-recovery funds should be treated as contributions to capital, and taxed as any capital asset, these efforts have been unsuccessful to date. This policy of taxing support funds strips away a large percentage of the distributions intended to advance universal service and turns over these funds to general government revenues. The Commission must find a way either to change this taxation policy or to adjust USF fund distributions, and therefore fund size, to accommodate the fact that USF recipients typically will not be able to use the full amount they are supposed to receive under the rule. For example, the estimates provided by Commission staff on September 29, 2009 will need to be adjusted upward if they are to be used to establish actual funding levels rather than amount of support needed for investment.[19] At the marginal rate applicable to many of the most efficient providers (over 33%), the funding level would need to be as much as 50% greater than the amount of support actually needed. To compound this problem, current progressive tax rates have the greatest impact on the efficient (and, hence, profitable) companies. As the Commission considers how to deploy broadband in unserved areas, however, it should not allow tax consequences such as this one to undermine rational USF distribution decisions.

The examples above reveal some of the real challenges regarding the sufficiency of funding in the existing USF system. As the Commission explores further development of national broadband deployment, these issues should be addressed as part of comprehensive forward-looking reform.

---

[18] *United States v. Coastal Utilities, Inc.*, 483 F. Supp. 2d 1232, *aff'd,* 514 F.3d 1184 (11th Cir. 2008).

[19] Omnibus Broadband Initiative, Presentation at Commission Open Meeting, at slide 45 (Sept. 29, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf (last viewed Nov. 23, 2009)("OBI September Presentation").

III. CONTRIBUTION METHODOLOGY

The Commission's Public Notice also requests comment on how the contribution formula for funding universal service should be modified to achieve the goals of the National Broadband Plan.[20] Modification of the contribution rules is a pressing aspect of universal service funding today, and must be addressed by the Commission before making any other reforms. The USF contribution factor was below 6 percent when it was first assessed in the year 2000 when it was first assessed at the turn of this century. With the current contribution factor at 12.3 percent,[21] immediate action is required to stabilize the funding base for universal service. The Commission has acknowledged that the current interstate telecommunications service funding base is contracting, even while demand for support is expanding.[22] The decrease in interstate wireline long-distance revenues (due to the increased use of wireless services and other market shifts, such as VoIP services, both of which contribute on only a percentage of their usage) has irrevocably changed the funding base.[23] It is critical that the contribution base be expanded and stabilized without further delay, to ensure sufficient funding will be available to fulfill the Communications Act's mandates.

---

[20] Public Notice at 1-2.

[21] *USF Contribution Factor 4th Quarter 2009 Public Notice*. Reports from industry sources have predicted that the factor will be approximately 14.2 percent in the first quarter of 2010 based on published USAC projections. Stifel Nicolaus, Industry Assessments Expected to Jump, Up Pressure for USF/Intercarrier Reform, email from Rebecca Arbogast & David Kaut (sent Nov. 3, 2009).

[22] *See Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, Report & Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("USF *Contributions NPRM*").

[23] *USF Contributions NPRM,* ¶ 3.

There is near unanimity in the telecommunications industry that the contribution factor needs to be reformed based on a more stable and rational basis.[24] CenturyLink supports the recommendation that "all carriers that utilize the public switched telephone network be required to contribute to the USF as soon as possible."[25] It is the Commission's own policy that universal service should be administered in a competitively-neutral, technology-neutral manner,[26] so distinctions between wireless and wireline service, and between digital subscriber line and cable modem services, should be eliminated.[27] IP-enabled services, wireless services, and broadband services are very much dependent on the availability of a ubiquitous network. Wireless providers typically rely on the existing telephone network for backhaul between different parts of their networks. At a more fundamental level, all interconnected service providers, including wireless carriers and cable telephony providers, benefit from their ability to deliver calls to and receive calls from wireline customers. The only equitable, non-discriminatory and technology-neutral rule for contributions that will produce a sufficient base of support is to require all service

---

[24] For instance, the USF by the Numbers Coalition is made up of virtually every major type of telecommunications industry member. *See, e.g.*, USF by the Numbers Coalition, *The Consumer Benefits of a Numbers-Based Collection Mechanism to Support the Federal Universal Service Fund* (rel. Jan. 30, 2007).

[25] *A Holistically Integrated Package, Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, 20 FCC Rcd 14267, slip op. at 39, Appendix C (rel. Aug. 17, 2005) (submission of Robert Nelson, Joint Board Member).

[26] *Federal-State Joint Board on Universal Service,* First Report & Order, 12 FCC Rcd 8776, ¶ 47 (1997)("*USF First Report & Order*")("[C]ompetitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

[27] Some argue that cable or certain VoIP-enabled service providers should not be required to contribute unless they also receive support. However, eligibility to receive support never has been a criterion for the obligation to pay into the fund. *See Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge,* Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5465, ¶ 263 (1997) (requiring interexchange carriers and other providers not eligible to receive universal service support to, nevertheless, contribute to universal service).

providers to begin promptly to contribute to its support. If the existing COLR network is going to be expanded to ultimately include broadband, then it is imperative that the USF contribution mechanism be reformed to assist in the implementation of broadband USF policies.

Any new rules also should be clear and simple to administer. Legal uncertainty (or conveniently alleged uncertainty in many cases) about the treatment of new technologies under today's rules has contributed to the declining base of support. The obligation to contribute should be a bright-line rule, and the rule should be enforceable without extensive Commission audits. It should not be based on criteria such as an interstate/intrastate jurisdictional revenue split. There is also no basis for riddling the rule with exceptions, such as for telematic equipment, Internet-based fax services, or mobile family plans. Exceptions invariably lead to protracted interpretative disputes. The parochial economic advantages of such exceptions dwarf any public interest basis for them.[28]

For this reason, a number of parties have advocated changing from a revenue-based contribution methodology to a hybrid numbers-based or connections-based methodology. Contributors would simply count the number of customers connected to a working telephone number, IP address, or the equivalent connection, and contribute based on a multiple of that number. Assessments on special access circuits and dedicated Internet access connections could fall under this methodology, but may require additional contribution rules. A sensible policy

[28] For example, the existence of mobile family plans has substantially increased the number and opportunities of subscribers to use the telecommunications networks of mobile providers, thereby increasing wireless carrier revenues, advantages that are not possible with fixed wireline phone lines that are inaccessible through a large portion of the work and school day. Although the number of users in a household is larger with wireless connections than for wireline connections, an exception for family plans would ignore the real expansion of network and service usage that occurred with mobility.

would conclude that the base for support should include broadband connections of all providers if broadband is supported under the USF reform.

A broad contribution base will keep the per-unit assessment rate at reasonable levels, not overly burdening consumers, while providing for a larger USF than exists at present. CenturyLink has calculated that the current USF fund size of approximately $7.1 billion[29] would produce a per-unit monthly assessment rate of $1.09 if all working telephones and broadband connections were counted equally.[30] This broad and growing base for assessment purposes positions the USF for growth to enable it to support national policy goals of increased broadband availability. CenturyLink estimates, for example, that in the year 2010, an $11 billion USF fund could be supported for approximately $1.50 per connection per month.[31]

Assuming the Commission's rules keep pace with technological developments in the marketplace, the approach described above would be simpler and produce a broader base of contributors than the current system. CenturyLink understands that moving to a new contribution system will involve operational resources and some time before it can be implemented. Not only do billing systems need to be revised, which often takes several months to accomplish, some aspects of a new mechanism may need to be phased in over time to allow for adequate customer notification and avoid abrupt rate changes for consumers. Therefore, a

---

[29] Universal Service Administrative Company, 2008 Annual Report at 5 (amended April 2008).

[30] Federal Communications Commission, Local Telephone Competition: Status as of June 30, 2008, Tables 1, 14 (Jul. 2009); Federal Communications Commission, High-Speed Services for Internet Access Report: Status as of June 30, 2008, Table 1 (Jul. 2009). Using data for the most recent period, June 2008, produces a total of 542 million connections. Connections include wireline voice (ILEC and CLEC) connections, wireless voice connections, DSL, cable modem, fixed and mobile wireless, satellite, fiber and other.

[31] CenturyLink projects the number of assessable connections to grow to nearly 615 million in 2010. A simple mathematical calculation of an $11 billion fund divided by 615 million assessable connections equates to approximately $1.50 per month.

reasonably short transition period would be appropriate, for example, over twelve months, in order to address these operational and consumer issues.

IV. TRANSITIONING CURRENT HIGH COST SUPPORT TO ADVANCED BROADBAND DEPLOYMENT

A. The Commission Should Reform the Universal Service Fund to Advance Broadband.

The Public Notice recognizes that there may be a need to add broadband support to the USF, which is a proposition with which CenturyLink wholeheartedly agrees. The Public Notice also suggests that it may be possible to replace the existing high cost mechanisms to target support for broadband altogether.[32] While many argue that the USF is no longer needed to provide support for the core telephone network, this simply is not the case. For some time, support will be needed to compensate network owners for the high-cost investments and related operating costs that have been made and are being made pursuant to the current universal service compact. Not only does the Commission face legal constraints regarding the elimination of existing high-cost support, but terminating such support prematurely would be bad public policy because it would undermine service to customers depending on it; weaken the very carriers who are best positioned to fulfill the National Broadband Plan; and substantially increase the risk and, hence, the cost of capital associated with building new broadband networks.

Although CenturyLink expresses caution about a transition that is too rapid or leaves carriers with unfunded/underfunded obligations regarding ongoing voice services in high-cost areas, CenturyLink emphatically agrees that current USF support mechanisms should begin supporting broadband openly and, ultimately, primarily. In fact CenturyLink argues that this transformation should begin immediately instead of waiting several years while a new broadband

[32] Public Notice at 2-4.

support mechanism can be developed and implemented. The evolution of the marketplace for communications services has dramatically shifted in the last two years. It is apparent that broadband services will form the basis of many of the communications and telecommunications service of the future, including voice services.

CenturyLink believes that existing non-rural and price-cap high-cost USF support should be modified through a transitional plan that provides targeted support for broadband services. A group of five mid-size ILECs —CenturyLink, Consolidated Communications, Frontier Communications, Iowa Telecom, and Windstream Communications are filing today the Broadband Now Plan, which can substantially improve broadband deployment in a responsible, predictable, and stabilizing manner that will benefit all users, voice and broadband alike. A copy of the Broadband Now Plan is attached to this filing.

The challenge of universal access to broadband is the most pressing issue before the Commission. As Chairman Genachowski said last month:

> We believe that broadband is a critical infrastructure challenge of our generation. It is to us what railroads, electricity, highways and telephones were to previous generations – a platform for commerce and economic competitiveness, for helping address major national challenges like education and health care. As a country we were able to make sure that in each of those cases we achieved the goal of universality. It took time and a national commitment -- but we got there.
>
> But we have a lot of work to do when it comes to broadband. We have work to do on deployment -- ensuring that broadband connectivity is available everywhere in the U.S., including our small towns and rural areas. Nationally, about 10 percent of the country doesn't have broadband available.[33]

[33] Julius Genachowski, Chairman, FCC, "Connecting the Nation: A National Broadband Plan" at 3 (Nov. 24, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294847A1.pdf.

This level of broadband deployment calls for increased investment, as the Commission noted in connection with development of a National Broadband Plan, where it concluded that the "goal must be for every American citizen and every American business to have access to robust broadband services."[34]

The goal of universal access to robust broadband availability to all Americans must address the deployment issues in the sparsely populated, and thus, high-cost parts of our country. The Rural Broadband Strategy Report found in particular that "[n]o national broadband strategy can be undertaken without due consideration to the rural broadband infrastructure. . . ."[35] CenturyLink agrees that policymakers must focus on and address obstacles to further broadband deployment in high-cost, rural areas. In the short run, the key decisions the Commission must make are the targeted broadband speed and coverage thresholds that need to be met in a predefined time frame. Once specified, the Commission can determine how to size and allocate the USF portion of the broadband funding while private enterprise provides its share of the funding to enable unserved and underserved markets. The Commission should, therefore, start the reform process to advance broadband deployment with the interrelated goal of simplifying and reforming USF and intercarrier compensation over a rational transition period.

The Commission can take significant evolutionary steps now to address broadband deployment while embarking on the longer and more complex migration path to modernize universal service and intercarrier compensation systems. As the Commission's broadband

---

[34] *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, ¶ 5 (2009).

[35] *See* FCC Report, Bringing Broadband to Rural America: Report on a Rural Broadband Strategy" at ¶ 8 (May 22, 2009).

deployment team has recognized, the current universal service system suffers from structural problems that present a significant hurdle to ubiquitous broadband deployment.[36] Together with other mid-size ILECs, CenturyLink proposes in the Broadband Now Plan immediate reforms to existing mechanisms that will target funds for significant broadband build-out in the near term. The impact of new government-supported broadband will be maximized if there is a simultaneous requirement that recipients of any incremental broadband funding must commit significant investment dollars to the same end. These reforms would substantially advance the goal of deploying ubiquitous high-speed broadband service, while serving as a bridge to achievement of the Commission's goal of universal broadband access. The government mandates and related support programs must be clear, sufficient, and predictable if companies and investors are expected to dedicate capital toward accomplishing this goal.

Reforming the existing USF fund to support broadband should be a transitional process, protecting service reliability for the benefit of consumers. Longer term, funding should be aligned into two primary categories: (1) maintenance capital expenditures and operating expenses for the legacy COLR network; and (2) incremental funding specifically for broadband deployment. Until this transition can be accomplished, the Commission should immediately adopt the Broadband Now Plan, which:

- reforms non-rural high cost support for price cap carriers to provide support to wire centers that have costs which exceed 2.75 times the national average cost per line;
- qualifies any carrier for support that assumes COLR responsibilities and uses incremental support to provide advanced broadband;
- requires use of incremental support to be devoted to broadband investment until broadband is deployed to 98 percent of lines;

[36] FCC News Release, *FCC Identifies Critical Gaps In Path To Future Universal Broadband* at 2-3 (rel. Nov. 18, 2009)("Critical Gaps News Release").

- obligates providers to contribute significant private investment capital toward achieving broadband availability; and
- reviews the mechanism after the transition is implemented.

The Broadband Now Plan would better target existing high cost support to areas truly in need of support, repurpose USF over time to support broadband, and support both capital expenditures and ongoing operational expense needed to support uneconomic areas. It would also maintain service to existing voice customers, meet emergency and law enforcement needs, and expand middle and second mile transport for other providers in rural areas

As set forth in more detail in the attachment, the Broadband Now Plan proposes to alter the existing USF through the current process system that delivers targeted high-cost model support. First, model support would be retargeted on a more granular basis to the highest cost wire centers (rather than based on broad study areas or only in states that qualify for support). The key aspect of this phase of reform is the elimination of compulsory cross-subsidies that serve as disincentives for investment and create potentially damaging competitive effects. With properly targeted high-cost model funding, support will be provided if and only if the carrier commits its capital to expand broadband availability in combination with government-provided support. Carriers would receive the incremental high-cost model support until they complete deployment of broadband to 98 percent of their lines.

Carriers would receive high-cost model support only if they are committed to devoting their own incremental investment in combination with incremental USF support to realize broader deployment of high-speed services. Specifically, we propose that carriers receiving the incremental support would be required to invest $800 per household to deploy broadband facilities in unserved areas for so long as they received the incremental support. By targeting

support only to the highest cost areas and providing incremental support for broadband tied to increased private investment, the incremental reforms in Phase I would correct significant inefficiencies and reduce arbitrage in the current funding mechanism, while sparking significant new broadband deployment in areas where there is true economic need.

The Universal Service Fund would be transformed fundamentally to function effectively in a world where communications are increasingly migrating to data services based on broadband networks. Transitioning to the new long-term USF model will take significant time and coordination, including various rulemakings (and appeals), reasonable transition periods, and predictable and achievable implementation steps. CenturyLink does not believe reform should be delayed by this process given that our suggestions for Phase I can be implemented in the short term and will facilitate meaningful progress toward universal broadband deployment. Further, some of the measures proposed for Phase I (e.g., distributing funding on a more granular basis) will be necessary elements of implementing Phase II reform and thus will move us closer to fundamental reform. Proceeding in stages will aid with the transition and result in less disruption and uncertainty—factors that would otherwise discourage large, long-term investments in broadband deployment and upgrades. Ultimately, the goal would be to simplify the USF mechanisms into two categories (1) broadband capital expenditure (CapEx) support for unserved or underserved markets, and (2) maintenance CapEx and operating expense (OpEx) for the network.

This proposal would rapidly, efficiently, and effectively address many of the structural problems in the current universal service system identified by Commission staff in its

presentation at the Commission's November 18, 2009, open meeting.[37] The proposal would target the use of support, spur incremental private investment, reallocate current universal service funding toward the deployment of broadband and create a higher level of accountability for the use of USF support. Notably, the first step of creating additional wire center funding immediately would significantly improve the availability of broadband Internet access and allow carriers to prepare for future network expansion. We estimate that the Broadband Now Plan could increase broadband deployment such that service with 6 Mbps downstream throughput would be made available to approximately 95 percent of the Mid-Size ILECs' voice connections within the next 5 years, while also substantially increasing broadband deployment elsewhere.[38] Ultimately, however, the Commission will select the speed and coverage goals and revisit them to determine how the broadband standard should evolve over time and how USF is sized and directed to achieve the chosen policy objectives. No matter which speed and coverage goals the Commission selects, the Broadband Now Plan would fulfill an important role in implementing those goals.

The Broadband Now Plan would be implemented in a competitively neutral fashion consistent with the requirements of the Communications Act. Any broadband provider could apply for wire center support so long as it would be willing to assume (1) assume exclusive COLR responsibilities for offering facilities-based voice service to all lines throughout the entire wire center and (2) use temporary, incremental support, above and beyond current funding levels, to deploy broadband at the chosen speed target in the wire center. The incumbent with existing COLR obligations would receive wire center-based model support unless a lower cost

---

[37] *Id.*

[38] *See* Broadband Now Plan, Attachment A.

provider stepped forward to assume these commitments. A new entrant would have to demonstrate, based on its own costs and network, that it would require less support to serve the wire center than would otherwise be needed as determined by the forward-looking model. If the new entrant were awarded support for a wire center, the incumbent would be relieved of any and all COLR obligations including, but not limited to, unbundling, resale, and pricing regulations.

B. There are Substantial Benefits to the Broadband Now Plan.

1. Future Broadband Support Would Be Distributed on a Targeted Basis to High-Cost Areas to More Accurately Fund Universal Service.

Future broadband support would be targeted to support high-cost areas, and only a single provider should be supported in any given area based on the proposed recipient's ability to fulfill USF funding conditions. For years, industry members have known that many non-rural and rural carrier high-cost areas do not enjoy sufficient support from the USF to enable carriers with COLR obligations to fulfill their obligation economically to provide voice service at comparable rates in an area that would otherwise be uneconomic to serve.[39] In particular for larger carriers, study-area averaging was developed based on the idea that the carriers could pool together low and high-cost areas in order to achieve rates that produce reasonable results for the study area as a whole. This reliance on cross subsidies has not been sustainable for many years, however, because competition in low-cost areas denies COLRs the ability to generate the returns in those areas needed to cover their losses in the high-cost areas. This same "sufficiency" problem exists with respect to funding the high costs of providing broadband services by price cap companies.

The Commission should also take stock of the fact that its current statewide averaging methodology has produced at best only mixed results at the state level. Only about half the states

[39] *See* Section I.B., *supra*.

have established high cost funds.[40] And even of those states that have high cost funds, many are underfunded and continue to be subject to court challenges and controversies.[41] Even if every state had completely fulfilled its mandate, they still would not be addressing the fundamental problem. Every one of the state programs continue to rely on existing study-area averaging, and thus avoid directing support to the true high-cost areas of price cap companies.

The root cause of the current system's inadequacy is not difficult to identify. Indeed, the Joint Board itself accurately identified the problem in its Recommended Decision:

> …the current high-cost universal service mechanisms are dated and need to be modernized in several ways. New entrants often compete only in the densely populated areas that have relatively low costs. This makes it much more difficult for incumbent LECs to charge the same rates in both their low-cost, densely populated areas and their higher cost remote areas. None of the existing support mechanisms adequately recognizes this phenomenon, which generally occurs on a smaller scale than the typical telephone exchange.[42]

Simply stated, the existing high-cost mechanism does not adequately reflect the realities of today's competitive telecommunications market.

Today's market is dominated by intermodal competition where competitors have the freedom to pick and choose where they will serve, often opting to serve profitable areas while ignoring other higher-cost regions. The current mechanism perpetuates monopoly-era assumptions regarding study-area cross-subsidization, and propagates the myth that companies can rely on revenues earned in low-cost areas to offset costs incurred in high-cost areas. As the

---

[40] General Accounting Office, Federal and State Universal service Programs and Challenges to Funding, GAO 02-187, Appendix III (Feb. 2002).

[41] *See also* Kansas Corporation Commission's Petition for Declaratory Ruling Affirming the Lawfulness of Its USF Certification Procedure, WC Docket No. 08-55 (filed Apr. 16, 2008). Brief of FCC as Amici Curiae, *Vonage Holdings Corp. v. Nebraska Public Service Commission*, No. 08-1764 (8th Cir. filed Aug. 5, 2008).

[42] *Comprehensive USF Reform Recommended Decision,* ¶ 22.

Commission considers the numerous plans and proposals put forth in this proceeding it is absolutely crucial that it balance two needs: the need to control the growth of the fund, and the need to reform the fund in such a way that all high-cost areas receive adequate support to fund network expansion for broadband in the face of increasing intermodal competition.[43] This problem of insufficient support is exacerbated in the broadband context because of the lower subscription rates for broadband services coupled with the significant capital required to provide broadband service.

At the same time the Commission moves to a more targeted calculation of and distribution of support to truly high-cost areas, it should also eliminate duplicative support. There is no longer public policy justification for providing universal service support for a second provider to build out to a particular area. Although multiple providers could qualify for support under the broadband model, support should not be used to duplicate networks. Consequently, the identical support rule should be eliminated immediately, with a phase-out of support to the extent the Commission deems necessary. There is almost universal agreement among policymakers that the identical support rule should be eliminated.[44] In addition, there is simply no justification for allowing competitive ETCs to receive access charge replacement support.[45]

---

[43] It is precisely this very balance that the Tenth Circuit agreed was permitted. *Qwest I*, 258 F.3d at 1199.

[44] Indeed, the *Identical Support Rule NPRM* achieved unanimous support from the Commission Commissioners, even though the other two *Notices* stirred far more controversy among the Federal-State Joint Board and Federal Communications commissioners voting on these matters to date.

[45] *See, e.g., Petitions of Sprint PCS and AT&T Corp., For Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC Rcd 13192, 13196, ¶ 9 (2002), *pet. for rev. dismissed*, *AT&T Corp. v. FCC*, 349 F.3d 692 (2003).

These high cost mechanisms were specifically designed to reduce the regulated access charges of ILECs while minimizing increases in regulated end-user rates.[46] .

2. High Cost and Rural Areas of Price Cap Carriers Would Receive Compensation for the First Time.

The current mechanisms make distinctions based on definitions of "rural" and "non-rural" study areas that do not take into account the fact that differently classified carriers may face the same challenges. It is well known that large rural study areas often contain many high-cost wire centers that do not receive support because of the assumption of cross-subsidy that led to the use of study-area averaging for high-cost loop support. The Broadband Now Plan would correct this improper allocation of funds under the current system by permitting rural price-cap carriers a one-time opportunity to elect to convert their study areas to a reformed non-rural high-cost mechanism based on wire-center support.

Price cap regulation was adopted at the federal level in the early 1990s during a time of stable and predictable demand in order to provide a more efficient method of setting prices that more closely resembled the operation of competitive markets. Rather than allowing carriers to recover their costs on a cost-plus basis, the price cap methodology capped rates and only allowed adjustments for inflation, a productivity factor, and certain externally imposed costs. The price cap basket and bands approach entitled carriers to a certain amount of pricing flexibility irrespective of costs, but the productivity factor relentlessly decreased permissible revenues, forcing a price cap carrier to continually search for efficiencies in order to earn a reasonable rate

[46] *Access Charge Reform,* Sixth Report and Order, 15 FCC Rcd 12962, ¶ 195 (2000) ("*CALLS Order*")(price caps); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order, 16 FCC Rcd 19613, ¶ 128 (2001)("*MAG Order*")(rate of return).

of return.[47] Price cap regulation has the effect of divorcing the regulated rates from a measure of regulated costs (although competition creates a strong relationship between rates and costs in lower-cost areas).

Permitting rural price-cap carriers to elect reformed and targeted non-rural model support would significantly improve conditions for broadband deployment and would move the industry in the direction of future support based on broadband costs. Because of the need to improve efficiencies, maintenance and expansion of rural networks requires a carrier to make a careful economic analysis of the potential revenues that can be achieved from customers, particularly in high-cost territories. If customers cannot produce sufficient and sustainable revenues, there is a disincentive to upgrade a network to accommodate advanced communications or to modernize facilities.[48] Such a result is antithetical, however, to ensuring that rural subscribers have access to modern and advanced services, something that Section 254 was intended to guarantee. This disincentive to investment in rural America by price cap companies must be addressed by the Commission to fulfill its universal service mandate and the universal broadband goal it ultimately envisions.[49]

---

47 *Price Cap Performance Review for Local Exchange Carriers*, Fourth Report & Order in CC Docket No. 94-1 and Second Report & Order in CC Docket No. 96-262, 12 FCC Rcd 858 (1995).

48 This disincentive has been manifested to date in the decision of certain price cap carriers to sell existing high-cost exchanges to smaller carriers with different economic profiles, retaining the lower-cost, higher-density exchanges for themselves.[48] Given that the Commission has established the "parent trap" rule, however, there is a limit on the ability to sell high-cost exchanges as a way to ensure that customers enjoy the benefits of added investment in their exchanges and advanced networks. 47 C.F.R. § 54.305.

49 As the Commission has observed, there is nothing in the law that requires it to make a distinction between rural and non-rural carriers for universal service purposes. *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 19 FCC Rcd 11538, at ¶ 1 n.2 (2004); Tenth Report & Order, 14 FCC Rcd 10156, ¶ 458 (1999)("*Tenth Report & Order*"). Those distinctions, on the other hand, do make sense in terms of the relative rights

3. Support Would be Targeted to Areas Currently Unserved at the Committed Minimum Speeds.

Support would be targeted to high-cost wire centers where broadband is not currently being provided at the committed minimum speeds outlined in Section IV.B.5, *infra*. This approach would differ markedly from the current universal service approach, which for rural carriers, targets money to entire study areas that experience higher-than-average costs, and for non-rural carriers targets entire states with higher-than-average costs. As the record in the National Broadband Plan demonstrates, the amount of money required to bring broadband at high speeds everywhere is much greater than can be reasonably expected from a government-funded program such as universal service. Some estimates put the total cost of ubiquitous broadband as high as $350 billion.[50] And, as noted earlier in Section I.B., *supra*, this is an after-tax amount, which means that, given prevailing marginal tax rates for efficient providers in low-density areas, any USF component would have to be approximately 50 percent higher to support the desired broadband capability. Given this sobering reality, it only makes sense to focus public funding on areas with a pressing, immediate need, i.e., those areas that do not have broadband service at the target speed. In many areas, this will be where there is no broadband service at present. In others, it will be areas which have some broadband, but at less than target speeds. If there is still money left after unserved and underserved areas are covered, then further analysis could ascertain whether any changes to the program are warranted. However, and in any event, USF funding should not duplicate stimulus funding provided under the ARRA. There is no

---

granted under Section 251 interconnection or with respect to the grant of ETC status under Section 214(e).

[50] OBI September Presentation at slide 45 (Sept. 29, 2009).

justification for funding areas where another government program already provides sufficient support.[51]

4. A New Broadband-Oriented Cost Model Would Better Define Costs.

The Commission has recognized that using a cost model can be beneficial in increasing the predictability of support because it is based on national assumptions and other defined characteristics.[52] In addition, as the Commission has stated in the past, basing disbursements on a forward-looking economic cost model will improve the efficiency of carriers that are building broadband networks.[53] The courts have approved the decision to use model-based support, and have deferred to the Commission's judgment in designing such a model.[54]

Although the Commission's current HCPM model is based on voice network costs, not the cost of providing broadband, the underlying principle is the same. As such, it would be advisable to maintain stability by continuing to use the HCPM through a transition period. Both the HCPM and a new broadband model will focus support on the same geographic areas as the primary driver of cost for both voice and broadband services is low population density. A new broadband model will take some time to develop; therefore, the Commission should continue using the HCPM while changing the way it is used to target support to the highest-cost wire centers without regard to the identity of the carrier that serves the wire center.

---

[51] Indeed, the ARRA requires that applicants identify funds for projects that are already funded from other government programs. ARRA, § 6001(e)(6). National Telecommunications & Information Administration & Rural Utilities Service, Notice of Funds Availability (NOFA) and Solicitation of Applications, 74 Fed. Reg. 33104, 33115 (Jul. 9, 2009)("NTIA-RUS NOFA").

[52] *Tenth Report & Order.*

[53] *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶¶ 672, *et seq.* (1996).

[54] *Qwest I* at 1205-07.

5. Fund Disbursement Would be Predicated on a Substantial Broadband Deployment Commitment.

The National Broadband Plan should seek to define specific goals that fulfill the ARRA's statutory purpose. Therefore, it makes public policy sense to move immediately to making broadband deployment a condition for receiving USF support. Although a broadband mechanism will be phased in over time, establishing broadband commitments up front will further the Commission's policy goals even as this transition proceeds, better positioning the nation to achieve the goals of the National Broadband Plan. Therefore, the Broadband Now Plan includes a requirement that incremental USF support, such as funds received through reform of the non-rural high-cost support mechanism be used to expand or enhance broadband capabilities in unserved or underserved areas.

This commitment is also underscored in the Broadband Now Plan by establishing specific investment expectations that recipients of incremental support funds would be required to meet as a condition of receiving funding. Recipients, for example, would be required to invest $800 per household of their own capital for unserved or underserved households before government funding would support any remaining required investment. Finally, all other existing USF rules applicable to eligible telecommunications carriers should continue in force, such as the commitment to provide the customer with access to emergency services.[55] These conditions are necessary to ensure that public interest mandates continue to be met through the use of public funds.

[55] The ETC guidelines are currently set forth in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005)("*ETC Order*").

6. The Broadband Now Plan Would Provide Compensation for Up-Front Investment Costs as well as Ongoing Operational Expense.

Some have suggested that only capital expenditures for introducing broadband should be supported by the fund.[56] While it is true that up-front expenditures are high in rural areas and require support in order to be economically justifiable, proposals to limit USF to up-front investment fundamentally ignore the economics of serving rural customers. The cost of providing broadband services is a function of ongoing operational costs, such as maintenance, repair, customer service, etc., and a large portion of these costs are elevated and fixed in rural regions. For instance, repair costs are often higher in rural areas because of long travel times, the length of the plant that must be inspected and maintained, and the need to locate offices and repair personnel in reasonable proximity with the delivered services. These high fixed costs can only be spread over a few customers in sparsely populated communities.[57] Therefore, the relative amount of ongoing per-subscriber costs is simply much higher in rural areas than in urban ones. If prices of broadband services are not high enough to recoup these additional costs, then additional support is necessary to "ensure that all people of the United States have access to broadband capability. . . ."[58] And, of course, if the price is too high, then adoption rates will remain very low, compounding the universal service coverage issue and retarding the goal of adoption. The Broadband Now Plan would rectify this problem by inclusion of ongoing operational expenses as a proper basis for support.

---

[56] NTIA-RUS NOFA at 33113.

[57] Commission Staff recognize the much higher ongoing operational costs that rural carriers incur. OBI September Presentation at 44. Thus, the higher ongoing costs experienced by carriers serving rural territories is a necessary component of universal service.

[58] ARRA, § 6001(k)(2).

7. Existing Voice Service Customers Throughout the Service Area Would Continue to be Protected, Including in Any Areas Not Reached by Broadband.

Although broadband services are clearly the wave of the future, there will continue to be a number of customers on the telecommunications network that only rely on voice communications alone either through personal choice or because broadband has not yet been built out to their premises. Universal service policy, therefore, must continue to support these customers through the transition period. Fortunately, continued support for such customers should impose only a minimal burden on the system and would not impede the broadband goals under Broadband Now Plan. Protecting existing voice customers would also fulfill ongoing responsibilities to provide law enforcement with data and customers with access to emergency communications.

8. Middle Mile and Second Mile Transport Would Be Supported.

Network investment in facilities that provide added capacity for second and middle mile transport would be supported. With support, transport services would be created and offered at affordable rates to other broadband providers, including mobile broadband providers seeking to serve supported areas. One of the material impediments to providing broadband at significant speed levels is that there is often insufficient capacity in many rural transport networks to handle the increased capacity needs of broadband services. The issues associated with second and middle mile transport have been well documented during another comment round in this proceeding.[59] A key benefit to promoting such transport would be the improvement of backhaul

[59] See comments filed with respect to this issue in this docket. Public Notice, *Comment Sought on Impact of Middle and Second Mile Access on Broadband Availability and Deployment,* NBP Public Notice #11, DA 09-2186 (rel. Oct. 8, 2009).

service provided to wireless carriers in rural areas, which should facilitate mobile broadband deployment.

9. Pole Attachment Reform Will Aid in Rural Broadband Expansion

Other infrastructure issues will remain even with the adoption and implementation of the Broadband Now Plan. In particular, pole attachment rates must be made reasonable to ensure that broadband attachers can use necessary cable and aerial fiber installations in rural areas. The Commission has recognized this critical issue in another docket.[60] Poles and conduit are routinely the way in which outside cable is installed to serve remote households. The disparity in rates and practices made available to cable providers, on the one hand, and telephone companies on the other has become a growing problem as telephone company ownership of poles has declined in recent years. This issue has become particularly crucial since pole owners, telephone companies and electric utilities, are themselves potential and actual broadband competitors. The Commission has sought comments on a tentative conclusion that it should establish a single attachment rate formula for broadband connections as a way of promoting rural broadband availability.[61] The Commission should adopt this proposal to advance pole attachment rate parity among competitors, avoid unreasonable expense in extending broadband, and spur broadband deployment.

---

[60] *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, Notice of Proposed Rulemaking, 22 FCC Rcd 20195 (2007)("*Notice*").

[61] *Id.*, ¶ 36.

V. IMPACT OF CHANGES IN CURRENT REVENUE FLOWS

The Public Notice asks for comments on the impact of reductions in universal service and intercarrier compensation revenues on achieving the goals of the National Broadband Plan.[62] Simply stated, the Commission's worthy goal of deploying ubiquitous broadband could cost as much as $350 billion. In order to achieve national broadband goals, the Commission needs to implement and enforce policies that facilitate revenue stability and reinvestment by existing COLRs in order to advance network upgrades and expansion for broadband. By doing so, the Commission will be sending the right signals to Wall Street as well, and additional private capital will flow into telecom network investment.

The inadequacies of the current universal service fund mechanism are fully described in Section III, *supra,* and need not be repeated here. Based on CenturyLink's extensive track record as a leading rural provider, purchaser of RBOC access lines, and consolidator in the sector, access and USF revenues directly impact the company's ability to maintain existing COLR services and deploy broadband. These sources of investment capital—internally generated cash flows from operations and external debt and equity—are critical to funding a multi-year, multi-billion dollar broadband deployment, much of which continues to support universal service goals.

A. Intercarrier Compensation Reform Is Critical to Ensuring Maintenance and Expansion of the Network on Which Broadband Services Ride.

There is no simple way to wave a magic wand and reduce the high cost of service in sparsely populated rural areas. By their very nature the amount of telecom plant investment in rural areas is higher per subscriber, loop lengths are longer, truck rolls take longer, maintenance

[62] Public Notice at 4-5.

is more difficult, and backup power supply issues are more challenging. If rural consumers have to fund the total cost of advanced rural telecom infrastructure, the rates would be cost prohibitive and network connections would decline significantly. While there is no doubt that the nation's economy and the wellbeing of all Americans is advanced through universal connectivity, the economics of serving rural America have never been more challenging due to the erosion of intercarrier compensation and the distribution problems associated with the USF.

The Commission recognized as long ago as 2001 that reform of intercarrier compensation was necessary, but has yet to decide how such reform should proceed.[63] Reform of intercarrier compensation would not only reduce regulatory arbitrage, but would enhance stability in terms of the ILEC financial model and encourage external capital availability at reasonable rates and on attractive terms.[64]

Although the compensation system was largely set up with the voice network in mind, the same network used to deliver voice also provides broadband capability to Americans and access to the Internet. Users of access services have often complained about the high cost of access charges. It is not surprising that customers would want to pay less for more service. But these reduce-expenses-at-all-costs pronouncements of large, integrated carriers that profit from the use of the ILEC network should be soberly evaluated to ensure that rural customers and those who do not currently subscribe to or enjoy the availability of broadband services are not harmed

---

[63] *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, 16 FCC Rcd 9610 (2001)("*2001 Intercarrier Compensation NPRM*"); *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005)("*2005 Intercarrier Compensation FNPRM*").

[64] Comments of CenturyTel, CC Docket No. 05-337, et al., at 3-5 (Nov. 26, 2008)("CenturyTel ICC-USF Global Reform Comments"); Comments of Embarq, CC Docket No. 05-337, et al., at 16 (Nov. 26, 2008) ("Embarq ICC-USF Global Reform Comments").

in the process. A revenue decrease that is too large will seriously compromise the ability of the Commission to establish and meet broadband goals as part of the national plan based largely on private investment capital. An abrupt change would worsen this impact by destabilizing the current investment climate at a time when such funding sources are needed to firmly back companies willing to engage in broadband deployment for everyone. A rational, stable, and measured movement toward reform of intercarrier compensation will best ensure that the network necessary to deliver broadband to rural subscribers is not harmed at the expense of rural customers.

Before specifically addressing intercarrier compensation reform, however, three simple steps should be taken to better define the scope of needed reform and fairly recognize the level at which all carriers rely on intercarrier compensation and support their networks.

First, the Commission must adopt phantom traffic rules in order to enforce existing obligations. These "phantom traffic" rules should require carriers to correctly identify the origination of traffic so that downstream carriers may properly jurisdictionalize and rate traffic that is received from other carriers. One workable way to accomplish this goal was previously proposed in a Commission rulemaking.[65] Adoption of phantom traffic rules would not only permit proper billing and recovery of applicable, tariffed charges, but it would also allow carriers and the Commission to better assess the current level of appropriate intercarrier revenues. Establishing the proper amount of intercarrier compensation due for use of the network would provide, in turn, a more solid basis for carriers and the Commission to assess how an eventual

[65] *High-Cost Universal Service Support*, WC Docket No. 05-337, et al., Order on Remand & Report & Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, Appendix A, ¶¶ 326, *et seq*. (2008)("*ICC-USF FNPRM*").

glide path toward unification and reduction of various intercarrier rates could responsibly be accomplished.

CenturyLink believes one adjustment to the Commission's 2008 proposal is necessary, however, for a workable solution. The 2008 proposal requires the neutral transit provider to pay the highest level of intercarrier compensation for traffic that is not identified.[66] This proposal would place an innocent tandem owner in the position of financing the phantom trafficker, leaving the tandem owner with the burden of having to track down and recover from the originating company. As neither the culprit nor a party with policing and enforcement capabilities, the innocent tandem provider should *not* have financial responsibility for the acts of another, independent party. The one change that CenturyLink would make to this proposal, therefore, would be to follow the USTelecom approach as it relates to these payments.[67] The perpetrator of the phantom traffic should pay the terminating carrier the highest applicable rate for the traffic. The transit provider should be able to avoid making the high payments if it cooperates with the terminating carrier by providing adequate records from which the phantom traffic originator can be identified and billed.

Second, the Commission must confirm and enforce existing access charge compensation for VoIP services. Fundamental to the ability to successfully implement the National Broadband Plan is the need for a confirmatory finding that IP-enabled services that terminate on the PSTN must pay appropriate intercarrier compensation, including access charges based on geographic end points, because they are functionally and legally the same as more traditional voice services

---

66 *ICC-USF FNPRM*, Appendix A, ¶ 337.

67 Letter from Glenn T. Reynolds, Vice President, Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008).

that use ILEC facilities, and competitive parity is essential. Conversely, the goal of parity treatment for various current and future technologies with respect to their end-user customers is not relevant to the question of how those technologies use local carriers' switched access facilities. Because all voice providers use the local switched access network in the same way, there should not be differences in access rates these competitors pay. To provide otherwise would, in short order, destabilize local markets, retard investment (broadband or otherwise) and undercut the goals of the National Broadband Plan. In fact, misinterpretations and misguided attempts at self-help in this area are at the forefront of many of the current carrier disputes. The Commission should confirm in the most explicit terms possible that IP-enabled services that terminate on the PSTN are telecommunications services because they are functionally and legally the same as other voice services that use ILEC facilities.

In its *IP-Enabled Services NPRM*, the Commission sought comment on the very issue of "the extent to which access charges should apply to VoIP or other IP-enabled services."[68] In the NPRM, the Commission indicated the dubious implications of allowing certain service providers to avoid paying for their use of LEC facilities based on the technology platform employed:

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.[69]

---

[68] *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863, ¶ 61 (2004) ("*IP-Enabled Services NPRM*").

[69] *Id*.

The Commission should affirm this conclusion immediately, before further harm is done to the very foundation upon which broadband will be deployed for currently-unserved Americans.[70]

Third, current self-help efforts must cease, and withheld funds must be paid. The number of carriers wrongfully withholding access payments and the amount of money so withheld has been expanding over the last year.[71] These self-help efforts are creating a real risk of undermining the Commission's broadband deployment efforts, and seriously weaken the ability to reform intercarrier compensation. The Commission has a long-standing policy against the use of self-help,[72] and it must act to ensure compliance with this policy. Inaction has had and will continue to have the opposite effect: it promotes the use of self-help measures, rather than hindering them.[73] Moreover those carriers currently using self-help measures have adequate

---

[70] We should note that legacy Embarq filed a Petition asking that the Commission forbear from applying the ESP exemption to VoIP traffic that is transmitted through the public switched telephone network ("PSTN"). *Petition of CenturyLink Local Operating Companies for Limited Forbearance under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and the Commission Orders on the ESP Exemption*, WC Docket No. 08-08 (filed Jan. 11, 2008). Although this Petition has now been withdrawn, the Commission should declare that the ESP exemption does not apply to voice telephony traffic provided by a VoIP provider sending calls to the PSTN. *See, e.g., Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, ¶¶ 2 , 18 n.51 (1988)("*ESP Exemption Order*"). The Commission should also deny the Feature Group IP petition for reconsideration raising this same issue. Feature Group IP, *Petition for Reconsideration of Petition* (filed Feb. 20, 2009) of *Feature Group IP for Forbearance from Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules*, WC Docket No. 07-256, 24 FCC Rcd 1571 (2009).

[71] Indeed, CenturyLink has had to initiate litigation with a large IXC that has begun refusing to pay established and lawful rates for terminating access services in violation of explicit terms in its interconnection agreements and the settled precedent of the filed rate doctrine. *Central Telephone Company of Virginia, et al v. Sprint Communications Company of Virginia, Inc and Sprint Communications Company LP*, Case No. 3:09-cv-00720 (E.D. Va.) (filed Nov. 16, 2009); *CenturyTel of Chatham LLC, et al v. Sprint Communications Company LP*, Case No. 3:09-cv-01951 (W.D. La.) (filed Nov. 23, 2009).

[72] *See, e.g., MGC Communications, Inc. v. AT&T*, 15 FCC Rcd 308 (1999)("*MGC v. AT&T Order*").

[73] This lack of effective enforcement is accentuated by the policy of prohibiting the blocking of calls even to those carriers who are not paying the charges that are due. *See, e.g., Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd 11629,

remedies to resolve outstanding issues under the current rules, including filing complaints and participating in tariff proceedings.[74]

B. The Commission Should Adopt the Broadband Now Plan for Responsibly Reforming Intercarrier Compensation.

In addition to changes to the universal service regime, a broadband solution requires that the Commission enact reasonable intercarrier compensation reform. The need for such reform is well-documented and acknowledged by every communications industry stakeholder. The current intercarrier compensation regime has created opportunities for arbitrage, produced numerous disputes, and has done too little to prevent unlawful non-payment and evasion, all of which result in competitive distortions and unfair burdens on some providers and customers as compared to others. The resulting regulatory uncertainty, disputes, and increased costs discourage broadband investment and create regulatory barriers to broadband deployment.

Under the Broadband Now Plan, intercarrier rates would be reduced, with the lost revenue opportunities addressed, in part, through increased retail rates and the elimination of certain loopholes and arbitrage opportunities (e.g., phantom traffic, traffic pumping, and failure to pay approved rates for use of switched access services). Reduction in intercarrier rates will help transition the industry away from relying on implicit subsidies from access charges. At the same time, replacement of at least some of the lost access revenue with predictable explicit support would help to support a reasonable capital requirement for COLRs as investors perceive more certainty and lower risks than those inherent in today's uncertain intercarrier compensation

---

¶¶ 5-6 (Wir. Comp. Bur., 2007). This policy must also be applied evenly. *See* Letter from Robert W. Quinn, AT&T, to Sharon Gillett, Federal Communications Commission, WC Docket Nos. 07-135 & 07-52 (Oct. 14, 2009)(challenges Google Voice from blocking traffic).

74 *See, e.g.,* 47 U.S.C. §§ 204(a), 208; *MGC v. AT&T Order,* ¶ 9 n.16.

system. CenturyLink believes that a clear and enforceable system of intercarrier compensation is essential to attract the private investment capital needed for widespread deployment under the National Broadband Plan. Carriers, however, would not be made whole for all lost intercarrier compensation revenue. The intent is to create a fair and workable set of reforms that equitably spread the burdens among the relevant stakeholders.

Sufficient intercarrier compensation revenues are necessary to help stabilize operating performance, fund capital and operational expenses, and attract long-term capital investment. These sources of investment capital—internally generated cash flows from operations and external debt and equity—are critical to funding a multi-year, multi-billion dollar broadband deployment, along with supporting universal service goals. The Broadband Now Plan recognizes this by encouraging the Commission to:

- adopt "phantom traffic" rules that enforce existing obligations;
- enforce existing access charge compensation for VoIP services; and
- end current self-help efforts so that withheld access charges are paid.

These efforts will stabilize current intercarrier compensation mechanisms and will help define the nature and scope of industry revenues, which should ultimately reduce the amount of public funding required to achieve ubiquitous broadband deployment. In addition, the Broadband Now Plan would reform intercarrier compensation by:

- reducing interstate and intrastate terminating switched access and reciprocal compensation rates to $0.0065 per minute in three equal installments over three years;
- further reducing those same rates in two equal adjustments to $0.0055 per minute over two additional years, for a total of five years' worth of rate reductions;
- establishing a local service benchmark rate of $23.50 per month for residential service;
- allowing gradual increases in subscriber line charges to $8.00 per line per month for residential service;

- establishing a Network Advancement mechanism that would compensate an ILEC for part of the lost revenues caused by decreasing rates, as if the local service benchmark rate were charged;
- eliminating equal access obligations for all competitors; and
- reviewing the results of the plan to determine whether further reforms are necessary.

The Broadband Now Plan would address reform of originating access charges through a phase out over time of the equal access rules. Like ILECs, wireless, CLEC, and cable providers have all made substantial inroads in markets for local service. Indeed, traditional wireline ILECs no longer carry the majority of voice traffic. All of the ILEC's competitors, however, are free from equal access obligations, and they typically provide interexchange services themselves. They also operate without originating access charges, which makes intercarrier compensation reform for originating access a more narrowly focused process. Therefore, the Broadband Now Plan proposes that the solution for reform of originating access charges is to eliminate equal access obligations on a going-forward basis, while preserving the status quo for existing customers ("grandfathering" the rules with respect to them). Competition between voice providers will protect consumers. Moreover, it is unclear how equal access obligations would be implemented for VoIP and other IP-enabled voice services. Accordingly, the time has come to phase out the equal access rules and harmonize the treatment of originating long distance traffic for all competitors.

The intercarrier compensation portion of the Broadband Now Plan would produce three main benefits. First, it would reduce most uneconomic arbitrage, stabilize carrier revenues, and reduce intercarrier disputes. Second, it would reduce rates significantly for carrier-customers, and moderate any necessary consumer price increases, which is a financial benefit to all. Third, it would provide carriers with a reasonable and predictable glide path, coupled with the

alternative cost recovery methodologies outlined below.[75] The glide path would allow carriers to manage their networks and other operations over time, while maintaining and expanding rural networks to provide modern voice and broadband services. Importantly, the glide path provides clear and understandable signals to the financial community which should result in stability in debt and equity pricing.

The Broadband Now Plan proposal would be a win-win situation for all carriers and consumers. Although it does require compromises from everyone, including CenturyLink, it moves all parties and policymakers toward their desired solutions. It would also be an extremely powerful step in breaking the longstanding log jam with respect to intercarrier compensation reform. While it does not resolve all of the problems, it paves the way for material progress on the National Broadband Plan, and it specifically contemplates further consideration of additional reform as these steps are implemented.

C. The Commission Must Protect Consumers and Continue to Support Rural Networks by Making Available a Reasonably Sized Mechanism to Replace Reduced Intercarrier Revenues.

Whenever reform of intercarrier compensation has been discussed in the past, the Commission has indicated that some form of an access replacement fund might be necessary to adequately compensate carriers for a reduction in intercarrier compensation rates.[76] This has been the approach the Commission has taken in other access charge reform proceedings.[77] Indeed, the availability of such a mechanism was a critical element of both the original *ICF Plan*

---

[75] Any revenue shortfall would be made up of modest SLC increases, and if necessary a supplemental amount, as specified in Section IV.C, *infra*.

[76] *See, e.g., 2005 Intercarrier Compensation FNPRM,* ¶ 4.

[77] *CALLS Order*, ¶ 75 (price caps); *MAG Order*, ¶ 41 (rate of return).

and the subsequent *Missoula Plan*.[78] Not all carriers would need a replacement mechanism, which is called the Network Advancement Mechanism in the Broadband Now Plan. However, some rural and small town markets will require such a mechanism to support services provided by the mid-sized and other rural ILECs.

The Network Advancement Mechanism will be needed to replace certain rate recovery elements in intrastate rates (e.g., elements that were previously replaced in the interstate jurisdiction). However, it is expected that the Network Advancement Mechanism will not totally offset the reduction and therefore some increase in subscriber line charges would be justified. The Network Advancement Mechanism is needed, however, because customers in rural areas cannot economically bear the entire brunt of such a rapid and potentially significant shift in cost recovery. Consistent with the principle of universal service high-cost support, the Network Advancement Mechanism or some recovery mechanism should be established in addition to moderate SLC increases as rural ILECs reduce intrastate access and reciprocal compensation rates.

D. The Financial Impacts of Intercarrier Compensation on Rural High Cost Areas.

Study area averaging of access rates and universal service funding is the fundamental problem with the current system. Prior to competition, this system worked well and implicit subsidies funded COLR networks in uneconomic high cost areas. High-cost wire centers exist

[78] Letter from Gary M. Epstein to Marlene H. Dortch, CC Docket No. 01-92, transmitting Intercarrier Compensation Forum, Intercarrier Compensation and Universal Service Reform Plan, at 69 (Oct. 5, 2004)("*ICF Plan*"); *See* Missoula Intercarrier Compensation Reform Plan, attached to Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92, at 64, *et seq.* ("*Missoula Plan*").

nationwide and are embedded in study areas of all sizes. The smaller the study area, the more likely the intercarrier compensation rates and USF reflect the true underlying costs of providing service in that area. Larger study areas, however, often mask the economic disparities of wire centers within a single study area. This is why the Broadband Now Plan urges the Commission to distribute USF based on wire-center costs, pursue access rate unification between the intrastate and interstate jurisdictions, and ultimately implement access charge and reciprocal compensation rate reductions where these rates exceed $0.0055 per minute.

In high cost areas, intercarrier compensation makes the difference between generating a profit or a loss. For example, in one of its large Texas study areas, a CenturyLink special study of its wire-centers observed that 14 percent of its wire centers had a negative return on investment and another 45 percent produced returns of less than 10 percent.[79] In other words, just 41 percent (100 percent less the 14 and 45 percent mentioned above) of the exchanges were generating financial returns sufficient to fund their operations. And, these exchanges must provide sufficient funding to make up the shortfall in the other 59 percent of wire centers in the study area. These facts are not conducive to increasing, or even maintaining, investment in rural areas.

It has been widely recognized that the market standing alone is unlikely to deploy broadband to the last 10 to 15 percent of customers based on the current economics and technology. More than 14 percent of CenturyLink's wire centers serve less than 10 households per square mile and nearly 30 percent serve fewer than 20 households per square mile. In the large Texas study area referenced above, the cost to deploying nearly ubiquitous 6 Mbps

[79] *See* Michael J. Balhoff, Robert C. Rowe, and Bradley P. Williams, *Universal Service Funding: Realities of Serving Telecom Customer in High-Cost Regions,"* at 35 (Summer 2007), *available at* www.balhoffwilliams.com.

broadband service will cost approximately 35 times greater per line in the uneconomic high cost wire centers than in the low cost wire centers. While transforming a terrestrial COLR network into a ubiquitous broadband network is likely the most efficient means to delivering a robust broadband platform in unserved high cost areas, intercarrier compensation, USF, and substantial amounts of private capital will be necessary to accomplish this transformation.

In this further notice the Commission asks for numerous competitively sensitive data points such as originating and terminating access, transiting, interstate and intrastate revenues.[80] Generally speaking, access revenues are declining at a double digit rate with intrastate access losses outpacing interstate declines. The lack of absolute clarification on compensation for VoIP traffic has provided cover for carriers to make invalid arguments and to attempt to extend a purported policy rationale beyond its scope into absolutely clear-cut tariffs and interconnection agreements while engaging in self help. This single issue has the potential to undermine significantly the existing switched access regime. Transiting minutes have increased but the rate per minute is only a mere fraction of the lost access revenues. Increased network grooming, the emergence of alternative tandem providers, and a growing number of alliances between CLEC, cable, and wireless participants has resulted in switched, special and transit revenue erosion in the lower-cost wire centers that have been supporting the uneconomic high cost areas. Unless the Commission takes immediate action by adopting the Broadband Now Plan together with broader long term reforms, ubiquitous broadband will likely not be possible.

The Commission should be aware that reforms of critical support programs such as intercarrier compensation and USF, if not handled properly, will precipitate a negative reaction

[80] Public Notice at 4-5.

from capital providers. If reform of that regulatory system is perceived by investors to be arbitrary or politicized and it results in a loss of revenues to support regulatory obligations, then investors will avoid providing capital to the carriers fulfilling those obligations. Reduced cash flows would limit the financial flexibility of the carriers, resulting in higher debt costs (potentially due to credit downgrades) and a fall in equity values that is at least commensurate with the percentage reduction in cash flows (likely greater as valuation multiples are also likely to contract). The outcome would be less capital available for network investment—both for maintenance and for any additional investment in broadband. As such, if the Commission hopes to spur broadband investment, it must consider the impact of reform proposals on the availability and cost of capital, particularly for smaller carriers lacking the size, scale, and financial resources of Verizon and AT&T.

This concern is not theoretical, but is demonstrable and real, as evidenced by the reaction of investors in October 2009 to the intercarrier compensation and universal service proposal of then-Chairman Martin,[81] which threatened independent price-cap ILECs with meaningful reductions in access revenues without sufficient offsetting explicit support increases or revenue opportunities. When word of Chairman Martin's proposal began to spread to the financial markets in late October 2008, the stock prices of CenturyTel, Consolidated, Embarq, Frontier, Windstream and other similarly situated companies fell in a dramatic fashion over the same period. As it became clear that Chairman Martin's proposal lacked adequate support, the rural carrier share prices began to recover. This episode demonstrates that reforms of carrier support

[81] *ICC-USF FNPRM,* Appendix A.

will have important effects on the cost and availability of capital, and therefore the ability of ILECs to invest in broadband deployment.

Outcomes that produce greater financial uncertainty for broadband providers will severely undermine the Commission's broader policy objectives. In that regard, the current state of market equity yields associated with ILEC, and telecommunications sector, dividends provides additional evidence of investors' concerns about investing in the sector. If investors had additional confidence and reduced perceptions of risk, it would be reflected in the underlying equity prices and, all other things being equal, dividend yields would decline.

VI. COMPETITIVE LANDSCAPE

The Public Notice asks questions concerning the impact of the current competitive landscape on USF distribution practices.[82] CenturyLink submits that the future of expanded broadband coverage to rural Americans will be based on the wired network in rural America, a network that can cost-effectively support evolving broadband speeds and service, as well as expanded second mile and middle mile transport for all interconnected carriers. CenturyTel submits, therefore, that the ILEC remains well-suited to support government COLR policy objectives in rural America.

Competition has increased in some smaller towns. At the same time, other small communities and the outlying low-density areas around towns remain virtually unserved by all but the ILEC with COLR obligations. The current systems of USF and intercarrier compensation, which are based on averaging across study areas or other geographic regions, fail to account for the highly variable cost characteristics that prevail in rural America. High-cost characteristics are concentrated mostly in very low-density areas where the economics have

[82] Public Notice at 5-6.

demonstrated that competition is not feasible. And the averaging mechanisms simply spread those high costs over a larger service area, which has both high-and lower-cost characteristics.

CenturyLink submits that competition, in fact, *increases* the need for explicit and targeted funding as traditional implicit support dollars from urban areas and business customers are eroded. Effective support mechanisms of the future must adequately fund a more targeted COLR obligation in high-cost areas while avoiding the competitive distortions that arise when support is "averaged into" lower-cost markets. This goal can be accomplished better through implementation of more targeted support as recommended in the Broadband Now Plan. A natural consequence of targeting USF support will be an appropriate migration of funding to the truly high-cost areas.

Competitors have demanded the elimination of any subsidies received in the markets generating a sufficient return without regard to the fact that those funds often are intended to be and are used to compensate a COLR for its costs of other, high-cost wire centers. Such elimination will not aid the Commission in its broadband goals. Instead, it will simply widen the gap between the urban "haves" and the rural "have nots". Rather than focus on eliminating support that is still needed, the Commission should focus on targeting support on a more granular level in the current environment to support high costs in rural areas.

A. COLR Obligations Skew Service Coverage and Competition.

The current regulatory imbalances among competitor segments should be taken into account in crafting reformed universal service rules. Although the ILECs' protected monopoly status was eliminated by the 1996 Telecommunications Act and vast amounts of implicit support have disappeared as a result of competition, COLR obligations remain largely unchanged as ILECs bear the burden of implementing this important policy on behalf of state and federal

governments. The economics of deploying broadband in rural areas, coupled with the COLR obligation for voice services, will significantly increase the costs of infrastructure deployment in high-cost areas. Universal service has been and will continue to be an important mechanism available to permit carriers to serve customers in uneconomic regions, including providing broadband services.

COLR obligations are important for voice services and the COLR network will likely be important for broadband communications. In fact, being the sole COLR in rural territories entails real and ongoing costs. The COLR obligation requires a carrier to serve all customers upon demand, potentially to build new plant for wholesale or retail customers, and provide a policy-based level of service.[83] COLR therefore requires that a carrier be willing to assume obligations, be capable of fulfilling costly mandates, and be accountable for the provision of services. A COLR does not simply build a line upon the request of a customer, but must plan its network and make it capable of reasonably prompt deployment.[84]

There is no question that the cost of providing telecommunications service varies significantly depending on population density, the distance over which infrastructure must be deployed, topography, and socioeconomic conditions.[85] First, a large part of the cost of a telecommunications network is shared and subject to significant economies of density and/or scale. As the Commission has noted repeatedly, "a lower population density generally indicates

---

[83] *See* Comments of Independent Telephone & Telecommunications Association, CC Docket No. 05-337, 9, 11 n.21, and 16 (filed Apr. 17, 2008).

[84] Although part of the investment can wait until the customer requests service, such as the installation of a customer drop or network interface device, other investments cannot.

[85] This is true for all technologies, although the actual investments needed and the relative efficiencies of different technologies may differ from place to place.

a higher cost area."[86] The National Exchange Carriers Association ("NECA") estimated that as of 2000, the average household density in exchanges served by rural carriers was 5.95 households per square mile, whereas exchanges served by non-rural LECs had an average household density that is almost ten times as high, at 52.34 households per square mile.[87] These distinctions result in significant variation in the cost of deploying facilities in rural and other high-cost areas, on the one hand, and most cities and suburban areas, on the other.

As in other networked industries, the fixed costs associated with the provision of telecommunications are generally high in comparison to the incremental (marginal) costs. This means that in areas where there are fewer consumers, each customer must bear a higher portion of the network's fixed cost. Thus, it is not surprising that the Omnibus Broadband Initiative team has determined that the "economics of providing broadband to the rural U.S. are challenging because of low linear density."[88] Similarly, a couple of years ago, the Government Accountability Office ("GAO") found that "[t]he most frequently cited cost factor affecting broadband deployment was the population density of a market," and that "the cost of building a broadband infrastructure in areas where people live farther apart is much higher than building infrastructure to serve the same number of people in a more urban setting."[89]

---

86 *Federal-State Joint Board on Universal Service; North Carolina RSA 3 Cellular Telephone Company; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina*, CC Docket No. 96-45, Order, 21 FCC Rcd 9151, ¶ 23 (2006). *See also* OBI September Presentation at 44.

87 *See* Victor Glass, *NECA Rural Broadband Cost Study: Summary of Results* at 6 (June 21, 2000) ("*NECA Study*").

88 OBI September Presentation at 41.

89 Government Accountability Office, *Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas* Report No. 06-426, at 19 (May 2006) ("*GAO Report*").

Second, sparsely settled areas will also entail higher costs to serve because facilities will need to be constructed over far longer distances to reach end users. The distance between end users and the need to aggregate a critical mass of traffic in a switch together often necessitate the use of particularly long loops, increasing costs dramatically. Accordingly, the Commission has stated that "for universal service purposes … cost differences caused by differing loop lengths are the most significant cost factor . . . ."[90]

Public policy must recognize these COLR and high cost effects on network deployment and fashion universal service policy accordingly. For example, non-COLR competitive providers have the luxury of not serving high cost areas while competing in low-costs areas, which has the effect of eroding traditional implicit support that has been used historically by COLR-bound ILECs to support universal service. It is a fair policy outcome to require the competitive non-COLR providers to fund their fair share of the universal service obligation.

The Commission should create a level playing field where all USF recipients have the same obligations and accountabilities.[91] For instance, if a group of carriers are eligible to receive the same type of USF, then those beneficiaries must meet the same obligations, including investment, cost support, if any, *and* COLR obligations. Experience over the last thirteen years has demonstrated that it was a mistake to grant eligibility for USF support without also imposing equal obligations.[92] CenturyLink submits that the lack of an effective COLR policy was the

---

[90] *Federal-State Joint Board on Universal Service (Forward-Looking Mechanism for High Cost Support for Non-Rural LECs)*, CC Docket No. 96-45, Fifth Report & Order, 13 FCC Rcd 21323, ¶ 75 (1998).

[91] This conclusion does not mean that there cannot be separate rate-of-return and price cap high cost mechanisms. Rather, it means that beneficiaries of the different types of high cost support be treated the same.

[92] *USF First Report & Order, ¶* 144. Policymakers implicitly recognized the problems with this approach, but it has not been effectively corrected. *See, e.g., ETC Order*. Eventually,

single greatest cause of the runaway expansion of the USF, without occurred without generating a serious commitment to invest in rural America. In contrast, if ILECs are not sufficiently funded to continue implementing universal service policy, they must be freed of the COLR obligation, effectively ending decades-old universal service policy.[93]

B. The Existence of Some Competition or Partial Rate Deregulation in a Service Territory is not a Valid Criterion for Awarding Universal Service.

Proposals that would eliminate USF where competition exists from one additional provider in a market or where partial rate deregulation has occurred in a market are false policy choices that fail to recognize different regulatory obligations and service territories of the various industry segments.[94] NCTA postulates, for instance, that where competitors serve 75 percent of the households in a market without universal service funding, no funding is needed by any segment. The proposal fails to recognize the effect of study-area averaging described above. Under this proposal, the remaining 25 percent of customers are served by one ILEC, which is presumably the COLR. Without support, the ILEC will eventually be forced to cease providing service to those customers. NCTA's proposal highlights the problem of the legacy averaging system and the need to better target broadband universal service funding.

NCTA proposes an alternative trigger for eliminating USF where some retail rates have been deregulated in a market. Although the trigger for pricing flexibility is ambiguous, NCTA

---

policymakers recognized that providing universal service to more than one carrier in a market was wasteful. *Comprehensive USF Reform Recommended Decision,* ¶ 15

[93] Indeed, some have argued for the elimination of the COLR obligation altogether. Although CenturyLink would only support this type of approach in order to promote fair competition, it doubts that this policy change would be consistent with the goals of either universal service for voice or a national broadband plan. Nor would it benefit consumers.

[94] National Cable & Telecommunications Association, Petition for Rulemaking, Docket No. Unassigned, at i. (Nov. 5, 2009)("*NCTA Petition*"); Comments of Sprint Nextel, Inc., WC Docket No. 05-337, at 24-25 (Nov. 26, 2008)(retail rate deregulation should justify elimination of USF).

claims that a finding of the existence of competition is enough to ensure service availability at a reasonable rate and therefore no USF is needed in that market.[95] The response is the same as to NCTA's first proposal. Pricing in certain parts of the market may be deregulated and there may be competition there, but there are also almost certainly parts of those markets where service is uneconomic and no competition exists. Without USF and COLR systems that address these financial realities, customers will suffer as the COLR will eventually be forced to abandon the high-cost customers under the financial distress caused by such economics.

Some parties suggest that pricing flexibility eliminates the need for universal service funding. Eliminating support where some competition in a market exists is contrary to long-standing universal service policy in Section 254 of the Act, which seeks to ensure that services and pricing in high-cost regions are at levels comparable to those in lower-cost regions. In fact, high-cost markets far exceed the customer's ability to pay in sparsely populated areas. Without support, voice services and broadband services would have to be priced at levels that are not consistent with the mandates of policymakers and the Act. Although pricing flexibility may permit minimal rate increases for some customers, the overwhelming majority of the costs cannot be recovered from consumers. There simply are too few customers to implement cost-based pricing to be a viable policy option. Explicit funding is required, even if price flexibility is present. In fact, price flexibility is complementary to explicit universal service funding. Pricing flexibility permits revenue maximization, thus reducing the upward pressure on the amount of explicit funding required as a result of the competitive reduction of implicit funding in support of rural networks. To force a policy decision for universal service fund eligibility based on the

[95] *NCTA Petition* at 16.

presence of pricing flexibility can only produce inferior policy outcomes and ignores the important consequences of support funds being reduced.

Cable TV providers and wireless carriers often do not serve the same rural customers as ILECs. Further the cost characteristics are often not the same, because of density, regulation, service quality requirements, and a host of other factors. Therefore, it is wrong to assume that "competition" provides a good indication of those companies' infrastructure investment and capabilities to serve public policy.[96] When the NCTA proposal is examined carefully, it would only require that the competitor serve 75 percent of the households in an ILEC's territory. The reality is that the ILEC's COLR obligation requires that it serve *all* customers within its service territory, including the 25 percent of households that NCTA's definition ignores. These 25 percent of customers are usually located in the country, which is where the highest cost customers reside, with costs to serve that are many times higher than the per-customer costs of the 75 percent. CenturyLink notes that a 2007 study was performed in Texas to determine costs within rural clusters and in outlying districts, and the findings were that there was virtually no competition in the outlying areas, where 16% of households served by the ILEC had no cable service.[97] That same study indicated that 69% of the total wire centers studied served outside of town customers, and generated a 1% return on investment without universal service support.[98]

Reinforcing the same insight, cable TV companies generally negotiate their build-out commitments to exclude low-density areas and often do not choose to serve subscribers located

---

[96] Satellite provider arguably do cover the same rural territories as ILECs do, but their network and service offerings do not currently meet the same quality or speed characteristics expected of voice and broadband services, respectively.

[97] Balhoff, Rowe &Williams, supra n.79, at 21.

[98] *Id*. at 22.

in the country or other high-cost areas. For instance, at least one cable company has admitted that it will not build to areas that have less than forty to fifty subscribers per square mile.[99] In contrast, half of CenturyLink's territories have less than 50 subscribers per square mile. Similarly, wireless providers have only general build out obligations that fail to require coverage to all within their service territory.[100] As previously demonstrated, the very competition in the average and below-cost areas has eroded the implicit support relied upon by ILEC COLRs to implement universal service policy.[101] This funding is critical to services and must be better targeted. Of course, retargeting USF to those areas that are truly high cost, e.g., altering the cost averaging between town and country, could better address these concerns. Ideally, this targeting would be done at a wire-center or sub-wire-center level or it would use an approach such as the Broadband Now Plan, which proposes that the USF carrier pays an investment amount as part of qualifying for incremental support.

With respect to the partial rate deregulation point, while CenturyLink might agree that total deregulation in a market might justify the re-examination of subsidies, total deregulation does not exist anywhere in the country. Thus, even though regulation of local basic rates for some customers may have been eliminated, rate regulation of other customers or COLR obligations, or both, continue to exist in these same areas. And even though basic rates may have been deregulated, intrastate or interstate access rates may still be regulated. Rate regulation, and other regulatory requirements imposed solely on ILECs, such as COLR, continue

---

[99] *See* Testimony of Dallas S. Clement, Executive Vice President and Chief Strategy and Product Officer, Cox Communications, National Broadband Plan Workshop: Deployment – Wired, Tr. at 63-64 (Aug. 12, 2009).

[100] *See, e.g.*, 47 C.F.R. § 24.103 (personal communications service).

[101] *See* Section III.B.1., *supra*.

to prevent them from cutting their costs by targeting only profitable customers for the provision of service, a responsibility not shared by other market players such as cable, wireless or satellite.[102] As such, claims that USF should be eliminated where some competition or rate deregulation has occurred in a market should not be afforded any weight.

VII. HIGH COST FUNDING OVERSIGHT

The Commission requests comment on what oversight and accountability rules are needed to minimize waste, fraud and abuse to assure that broadband USF are used as envisioned.[103] CenturyLink supports the establishment of effective auditing programs.

A. The Commission Should Continue Its Existing Policy on Auditing USF Beneficiaries.

The Commission has already adopted detailed policies concerning audits of USF program beneficiaries, including those receiving funds in the high cost program.[104] The Commission has conducted numerous audits pursuant to these policies.[105] There is no indication that these audit programs are either inadequate in number, or unable to root out and obtain repayment of any overpaid universal service money.[106] Therefore, compliance with current programs would be adequate if continued under a reformed USF program.

---

[102] If basic rates are deregulated because of the existence of competition, the carriers cannot simply raise local rates to recover lost universal service support because they would lose the customer to a competitor.

[103] Public Notice at 6.

[104] *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report & Order, 22 FCC Rcd 16372 (2007).

[105] The Commission has clearly identified universal service auditing as an important function in its budgetary goal-setting. Federal Communications Commission, *FY 2009 Budget Estimate*, at 12 (Feb. 2008).

[106] Even the FCC Inspector General's seriously flawed Improper Payments Information Act reports do not indicate that current Commission audit and enforcement mechanisms are inadequate to recover potentially improper USF payments. *See, e.g.,* Office of Inspector

B. The Commission Should Reform the Audit Process to Better Utilize Limited Resources.

Although correct in concept, the Commission has spent tens of millions of dollars to conduct such audits, significantly more than what it has revealed as overpayment amounts in the process. ILECs in general have been good stewards of the universal service support they have received and have spent the money according to the rules to improve their networks to provide better and more advanced services to their customers. Congress has repeatedly recognized that the Commission's audit process is flawed and must be reformed.[107] A few simple steps would improve the audit process and make the audits more cost-effective.

First, the Commission should only hire qualified auditors who are trained to know the Commission's program rules. ILECs have spent countless hours effectively training auditors who knew little about the telecommunications industry, its accounting practices, or the Commission's regulations. Often, even after these inexperienced auditors learned of the correct practices and rules during an audit, they continued to harbor erroneous beliefs. Sometimes these auditors have created, in effect, their own regulations that the Commission never adopted or addressed, and then issued audit findings against the carrier for failing to comply with the newly manufactured regulations.[108] Many times, USAC audit review staff or the USAC Board itself have reversed these erroneous findings. But in the mean time, a lot of time and effort and costs

---

General, FCC, *The High Cost Program: Initial Statistical Analysis of Data from the 2007/2008 Compliances Attestation Examinations* (Nov. 26, 2008).

[107] S. Rep. 111-043, 111th Cong., 1st Sess. at 80-81 (Jul. 9, 2009) (to accompany S. 1432, FY 2010 Appropriations Bill). Rep. Boucher, before the House Subcommittee on Communications, Technology and the Internet, Hearing on Universal Service Fund Oversight, Prelim. Tr. at 138 (Mar. 12, 2009).

[108] Of course, neither USAC nor its hired auditors have the legal authority to adopt new regulations in the context of an audit under the Administrative Procedures Act. 5 U.S.C. § 553(b).

are wasted in trying to rectify the errors. At other times, even USAC has acted upon the erroneous auditor's advice, which has led to unnecessary appeals to the Commission.[109]

Second, the Commission should reduce the burdens such audits impose on smaller carriers by making them more efficient and eliminate duplication. USAC has often conducted repeat audits year after year of the same issues at the same companies. These repetitious audits are inefficient because, once one audit has been conducted for a particular year, the chances of recurring mistakes are virtually non-existent. These repeat audits almost never reveal that the originally discovered problem was uncorrected or that different problems have arisen, since the action of the original audit was all that was necessary to ensure proper administration going forward. In addition, carriers might require some time to correct the issues raised in the audit findings. USAC could also use the results of audits to conduct industry workshops that would broaden the salutary effect of conducting audits.[110] A system of statistical sampling would ease the burdens of carriers responding to audits and still create the desired effects that audits are intended to produce. There is thus little reason why the Commission would require more than one audit every three years with respect to one aspect of the universal service program, such as low income or high cost programs.

Third, the Commission should establish a more effective mechanism for providing advice as to rule interpretation and implementation to USAC and its auditors. Overburdened Commission staff may be unable to provide timely advice to USAC with respect to policy or rule

---

[109] *See, e.g., Request for Review by Madison River Communications, LLC of Decision of Universal Service Administrator*, WC Docket No. 06-122 (filed Dec. 12, 2008).

[110] USAC regularly uses the workshop method to improve beneficiary training in the schools and libraries context. *See, e.g.*, High Cost and Low Income Regional Workshops held by Universal Service Administrative Company (Sept. 24, 2009) *available at* http://www.usac.org/_res/documents/hc/pdf/training-2009/Agenda_Indianapolis.pdf (last viewed Nov. 23, 2009).

implementation. Thus, many times effective advice must await the formal appeals process, which commands an enormous amount of resources for the Commission and carriers alike.[111] Advice should be provided quickly, and it must be made available to the public to improve transparency and enable carriers to challenge erroneous advice at the Commission in an effective manner. The overall process will become much more efficient through such efforts, and prompt beneficiary compliance would promptly ensue.

Fourth, the Commission should audit all beneficiaries equally, not just ILECs. It has been previously established that the growth of the high cost fund is driven largely by increasing CETC funding pressure amounting to $1.2 billion for the current annual period and that the ILEC portion of the fund has remained relatively flat.[112] Common sense dictates that increased scrutiny relating to how funds are actually being used is warranted. Although eliminating the identical support rule will solve this problem substantially, such a policy will still not address that a fair and efficient auditing program is necessary for those competitive ETC beneficiaries who continue to receive transitional support amounts. All carriers should be audited equally.

VIII. LIFELINE/LINK-UP

The Commission asks whether the Commission should adopt a broadband lifeline/link up program similar to what was established for voice services.[113] CenturyLink agrees with the suggestion to establish a reasonable program to encourage broadband subscriptions.

---

[111] *See, e.g.*, *Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools, Aiken, SC, et al.,* File No. SLD-397612, et al., 22 FCC Rcd 8735 (2007); *Request for Review by Cook Telecom, Inc. of a Decision of the Universal Service Administrator*, 24 FCC Rcd 7611 (Wir. Comp. Bur. 2009).

[112] *High Cost Universal Service Support,* Order, 23 FCC Rcd 8834, ¶ 6 (2008)("*CETC Freeze Order*").

[113] Public Notice at 6-8.

Notwithstanding, the Commission should go further to take other steps to improve adoption beyond merely providing subsidies.

A. The Commission Should Adopt a Broadband Lifeline/Link-up Program

CenturyLink supports establishing a reasonable subsidy to low income households which could support their subscription to broadband. Part of the reason for current low adoption rates can be explained because of the cost of up-front connections to broadband service.[114] Buying down a part of the monthly cost of service could also quicken an affirmative decision to subscribe to broadband that would convince qualified low-income households that may already be struggling in the current economic conditions to subscribe to broadband. Support for a broadband low-income mechanism is nearly unanimous among policymakers and industry members.[115] Additionally, many states have low-income support mechanisms for voice services. The Commission should encourage the respective states to expand their programs to include support for broadband services.

The program that would best promote broadband adoption would provide partial support for installation and monthly subscription costs, but still ensure that consumers contribute their fair share of the cost service. Obviously, broadband services are more expensive than voice services, so a broadband low-income fund will not have the capacity to support a large portion of the cost of broadband service. However, providing a subsidy for a portion of the cost of

---

[114] One survey concluded that 19 percent of dial-up and non-Internet users cite price as the reason they do not subscribe to broadband service. Pew Internet & Home Life Project, Home Broadband Adoption 2009 (Jun. 17, 2009), *available at* http://pewresearch.org/pubs/1254/home-broadband-adoption-2009 (last viewed Nov. 23, 2009)("*2009 Pew Internet Research*").

[115] *See, e.g.,* National Association of Regulatory Utility Commissioners, Committee on Telecommunications, *Resolution on Lifeline and Link-Up Program Support for Broadband Internet Access Services and Devices* (adopted Feb. 18, 2009), *available at* http://www.naruc.org/meetingresolutions.cfm?2009-02-18 (last viewed Nov. 23, 2009).

installation and a fixed portion of the monthly subscription rate, for example, $ 5 or $ 10 per month would put the cost of broadband within the grasp of more consumers. The low-income fund should support a broadband option for the type of broadband service which meets the Commission's minimum definition. A subscriber could receive a subsidy when he or she purchases a higher speed service, but the subsidy amount would still continue to be the same. Consistent with the way in which the telephone low-income mechanism works, a broadband low-income subsidy should be limited to one connection per household, and it should only apply to facilities-based providers (so the Commission should not forbear from the statutory requirement with respect to broadband).[116] Eligibility should be based on the same criteria as used in the Commission's current lifeline/link-up program.[117]

The broadband low-income program should be considered an extension of the existing voice low-income program. This will provide administrative simplicity and less consumer confusion. Consumers would receive the voice and broadband low-income benefits from a single provider. Permitting separate low-income providers for separate voice and broadband services is ill-advised.

Given that the price of broadband service should remain affordable, ensuring that network subsidization occurs properly will help all consumers afford broadband, including low-income subscribers. Therefore, the level of low-income subsidies should be balanced with the need to establish a network-support mechanism in the high cost program that ensures that broadband service providers have access to sufficient revenues to justify the additional, private

[116] Because the broadband provider could also provide the customer with voice service, there is no need to provide low income support for both broadband and voice services.

[117] 47 C.F.R. § 54.409-.410.

rural investment necessary to upgrade networks, thereby reducing the need for USF funding overall. Therefore, promoting broadband adoption through a low-income program at this time must be secondary to ensuring broadband availability overall, particularly since adoption rates cannot increase without services being available. Once the Commission has a few years experience with the low-income broadband program, it should reevaluate it to ensure that it is meeting program goals, similar to what occurred with respect to the low-income voice program.[118]

B. The Commission Should Promote the Provision of Information to Subscribers.

Certain actions within the industry have actually impeded the availability of consumer information about broadband availability. For example, cable TV companies today routinely refuse to allow competitors to advertise the availability of broadband services provided by competitors, such as ILECs. CenturyLink recognizes that cable companies achieve a competitive advantage through such information-suppressing behavior, but such practices disserve the public interest and consumers. Because Congress mandated that the Commission establish a National Broadband Plan that would address, among other things, how to improve adoption rates for all Americans, requiring cable companies to accept paid advertising promoting the availability of such broadband services would aid in the national broadband promotion effort.[119]

Further, international broadband adoption experience has demonstrated the importance of facilitating the provision of information and training for potential broadband users that are unaware either of broadband's availability or usefulness. Promoting the availability of

[118] *See Lifeline and Link-Up*, WC Docket No. 03-109, Report & Order & Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004).

[119] *See* Letter from Jennie Chandra, Windstream Communications, Inc. to Marlene H. Dortch, Federal Communications Commission, GN Docket No. 09-51 (Nov. 11, 2009).

information and training can help the Commission address the other major impediment to broadband adoption: a potential subscriber's belief that broadband does not offer the subscriber any advantage that could justify a decision to purchasing broadband.[120] The Commission has effectively promoted the provision of information in other contexts with considerable success.[121] The Commission could also encourage other government agencies or private charitable institutions to increase the availability of training in the use and benefits of broadband services.

C. The Commission Should Promote Availability of Consumer Equipment.

A third reason cited by consumer polls as a reason for non-adoption of broadband services is the fact that computer equipment is too expensive for some low-income households.[122] Unlike telephone services, the relatively high up-front cost of purchasing computer equipment can be a substantial impediment to increasing broadband adoption rates. The expense of subsidizing the cost of computer equipment, however, is far beyond the means of the high cost universal service program and could unreasonably balloon the size of the fund. Instead of putting the government's eggs all in one basket, the Commission should encourage other federal and state government agencies or private charitable programs which may also be already working on this issue to increase the availability of computer equipment to low-income households.

---

[120] One study found that 50 percent of dial-up and non-Internet users did not subscribe to broadband services because it they not relevant to the user's life. *2009 Pew Research.*

[121] *See, e.g., DTV Consumer Education Initiative*, MB Docket No. 07-148, Report & Order, 23 FCC Rcd 4134, *recon.*, 23 FCC Rcd 7272 (2008).

[122] Five percent of non-Internet users stated that the reason they do not have broadband is because they do not have a computer, which is included in the 19 percent of dial-up and non-Internet users that cited the high price as the reason they do not subscribe to broadband. *2009 Pew Research.*

For instance, many private charitable institutions provide computers to low-income individuals and special target audiences that can also promote access to broadband services through ownership of computers.[123] Such efforts can address the need for computer equipment raised in consumer polls that hinder broadband adoption, but do not impose additional strains on the new broadband universal service program.

[123] *See, e.g.,* Hearts and Minds Network, Inc., http://www.heartsandminds.org/links/computers.htm - Jamaica Organization for Youth (last viewed on Nov. 23,2009); Corning Foundation, http://www.corning.com/about_us/corporate_citizenship/community/corning_foundation.aspx (last viewed on Nov. 23, 2009) .

IX. CONCLUSION

CenturyLink is encouraged by the Commission's recognition of the critical connection between USF, intercarrier compensation, and the National Broadband Plan. USF support can and should be reformed to repurpose and retarget support mechanisms for broadband services available in rural and high cost areas and to enable such areas to readily participate in job creation and a global economy. Intercarrier compensation should also be reformed to eliminate uneconomic arbitrage, stabilize revenue sources, and to reduce rates in a responsible manner in a way that protects consumers and investment in increasingly evolving and high demand rural networks that entail investment risk. COLR obligations cannot be ignored while implementing reform. The Broadband Now Plan provides a blueprint for immediate effective and fair action. The prompt resolution of USF and intercarrier compensation issues, as outlined in the Broadband Now Plan, builds a solid foundation for successful design and implementation of a National Broadband Plan "ensure[ing] that all people of the United States have access to broadband capability. . . ."[124]

Respectfully submitted,

By: /s/ *Gregory J. Vogt*

David C. Bartlett
John E. Benedict
Jeffrey S. Lanning
701 Pennsylvania Ave, NW, Suite 820
Washington, DC 20004
(202) 393-7113

Of Counsel

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suíte 200
Alexandria, VA 22314
(703) 838-0115

Counsel for CenturyLink

December 7, 2009

[124] ARRA, § 6001(k)(2).